

No. 22- _____

IN THE SUPREME COURT OF THE UNITED STATES

ARRON LAWSON,

Petitioner

v.

STATE OF OHIO,

Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF OHIO

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*****CAPITAL CASE*****

QUESTION PRESENTED

Does a state Court proceeding resulting in a sentence of death violate the Fifth and Eighth Amendments to the Constitution of the United States when the court fails to insure that the defendant is competent to enter a plea of guilty to capital offenses despite substantial factors known to the court which should have prompted a competency evaluation?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW AND RULE 29.6

STATEMENT

All parties appear in the caption of the case on the cover page. None of the parties included thereon have a corporate interest in the outcome of this case.

LIST OF RELATED CASES

The Opinion and Judgment of the Ohio Supreme Court, *State of Ohio v. Lawson*, Case No. 2019-0487, (2021-Ohio-3566), decided October 7, 2021. (Attached hereto as Appendix 'A')

Trial was held in the Common Pleas Court of Lawrence Co., Ohio (Case No. 17-CR-333), Judgment and Sentence of Death entered on March 1, 2019.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Arron Lawson respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Supreme Court of Ohio in this capital case.

OPINION BELOW

The Opinion and Judgment of the Supreme Court of Ohio affirming the Petitioner's conviction and sentence of death is reported as: *State of Ohio v. Lawson*, Case No. 2019-0487, (2021-Ohio-3566) and is reproduced at Pet. App. 'A'

JURISDICTIONAL STATEMENT

The Judgment of the Ohio Supreme Court was entered on October 7, 2021. Jurisdiction of this Court is invoked pursuant to 28 USCS §1257 as the judgment below was by the highest state court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

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

EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

The Petitioner Arron Lawson seeks review of his sentence of death imposed by the State of Ohio. After two weeks of jury selection, and against the advice of counsel, Mr. Lawson indicated his desire to enter pleas of guilty as charged. Prior to acceptance of the pleas of guilty that would subject him to a sentence of death, a discussion was held among the court and counsel regarding whether there should be a referral for competency prior to acceptance of the guilty pleas.

The Court was aware of the following facts:

1. That Mr. Lawson was making the decision to plead guilty to capital offenses against the advice of counsel.
2. That Mr. Lawson had changed his mind twice regarding whether he desired to plead guilty before the pleas were entered.
3. That at the time of the plea Mr. Lawson was under the influence of several prescribed drugs including Naproxen, Vistaril, Metronidazole and Zoloft, all to address some unspecified mental or emotional conditions.
4. That the defense never referred Mr. Lawson for a competency examination (despite his history of serious mental illness diagnosis and involuntary mental health related hospitalizations). When asked by the Court whether defense counsel had any question about competency, Mr. Lawson's attorneys, they were non-committal, at best.

At one point in the discussion, the trial judge indicated that he now was "second guessing" himself regarding whether he should have ordered a competency examination earlier in the case, prior to the start of trial. Nonetheless, the Court went on to accept Mr. Lawson's pleas of guilty to four capital homicide charges.

Under Ohio capital procedures when a defendant enters a plea of guilty to capital specification offenses a three judge panel is convened to hear evidence of the aggravating circumstances, render a verdict regarding applicability of the death penalty, and then proceed to a penalty phase if the panel finds him guilty of the homicides with capital specifications. Following acceptance of the guilty pleas, a period of some nine (9) days passed before the three-judge panel was assembled and began hearing evidence. Still no competency examination was ordered despite the earlier concerns.

The three Judge panel found Mr. Lawson guilty of four (4) counts of murder, each with multiple death specifications and after a sentencing hearing at which mitigation was presented ordered him to death for each aggravated murder.

Direct appeal was taken to the Ohio Supreme Court which ultimately affirmed the convictions and sentences of death in a non-unanimous decision. The majority found no violation of rights to Due Process or Eighth Amendment violation relative to the acceptance of the guilty plea and the resulting sentence of death in the absence of a competency determination.

In keeping with precedent of this Court, the dissent stated that “[t]esting the competency of persons accused of capital crimes is critical to affording the degree of due process guaranteed by the Ohio and federal Constitutions and fulfills the proscription found in the Eighth Amendment to the United States Constitution against cruel and unusual punishment. *Drope v. Missouri*, 420 U.S. 162, 174-175, 95 S.Ct. 896, 43 L.Ed2d 103 (1975); *Atkins v. Virginia*, 536 U.S. 304, 321 122 S.Ct. 2242 , 153 L.Ed. 2d 335 (2002).”

The Petitioner contends that the Ohio Supreme Court failed to follow precedent of this Court which holds that it is the duty of the trial court to *sua sponte* take steps to insure competence of the defendant where there exists sufficient indicia of potential incompetence.

Drope, supra. Clearly in this case there were compelling facts before the court that easily should have triggered an inquiry and competency hearing prior to acceptance of the pleas.

As the dissent below noted: “Our inquiry in this appeal, however, is not whether *we believe* that Lawson was competent; it is whether these factors taken together should be held to reasonably indicate to a trial court that further inquiry into the defendant’s competency is required, to insure the fairness of the proceeding, especially in a capital case.”

Because this case involves a sentence of death and the issue of competency was not resolved in keeping with the precedent of this Court, the conviction and sentence of death must be vacated.

REASONS FOR GRANTING THE WRIT

Acceptance of a plea of guilty to multiple capital murder counts entered against advice of counsel, and the resulting sentence of death upon a capital defendant without an inquiry and finding of competency violates Due Process and the Eighth Amendment proscription against cruel and unusual punishment

After nearly two weeks of jury selection the defendant-Appellant Arron Lawson announced his intention to enter a plea of guilty to multiple capital murder counts, against the advice of counsel. The trial court accepted the guilty pleas without a competency assessment and despite the Court's own reservations and substantial indicia of incompetence.

Prior to acceptance of the pleas of guilty the issue of competence of Mr. Lawson and whether an evaluation should be had was subject of discussion between the trial judge and counsel. Defense counsel stated:

Then I suppose more function of if he wants to do that, there's always a question of whether or not there needs to be an examination of his competence to waive jury in a capital case. Obviously that's not something that we can make that determination today. And it may be something that would require a psychological evaluation, although in a capital case, I would ask for an independent one rather than what we would do in a typical case...

In response, the prosecutor suggested that perhaps the defense psychologist hired for purposes of mitigation could render an opinion even though he had not conducted a competency examination, nor was he hired to. To that suggestion defense counsel replied:

I can't commit Dr. Stinson (defense psychologist) to being able to do that. I know psychologists that I have worked with in the past would probably say, "Well, that's a completely different review and assessment," and they're looking for different things than the context of presenting possible psychological information for purposes of mitigation. Obviously he would have more familiarity with this young man than anyone else, and so I assume that it could be done in a manner, although I -- I haven't thought through whether that would create some sort of a conflict in terms of what his testimony would be in the mitigation phase.

The trial judge expressed concern that no evaluation had been conducted as follows:

THE COURT: Because I brought this up months ago on the potential for a competency evaluation, and it was met with opposition. I didn't order it. But it was

met with opposition from the defense, and I'm now second-guessing myself that I should have ruled it over objection.

Even as the court and counsel were considering whether a competency evaluation was appropriate, particularly when against advice of counsel, the defendant himself appeared mired in indecision. Following the above hearing and after Mr. Lawson conferred with his family, defense counsel informed the court that he had decided not to enter a plea and to go forward with trial.

Thereafter, the jury selection process continued and a jury was seated but sent home for the night.

The very next morning as the court was set to commence the first full day of a jury trial, defense counsel for Mr. Lawson stated that Lawson again changed his mind and again decided-- against the advice of counsel-- that he wanted to waive his rights to a jury trial and enter a plea of guilty.

Despite the legitimate concerns raised the day before, the court proceeded to accept the pleas of guilty. At one point in the hearing-- likely consistent with earlier concerns regarding competency-- the trial court inquired of defense counsel as to whether there was any sort of "...*Adkins* (sic) claim or any mental deficiency" pertaining to Mr. Lawson that could prevent him from knowingly, intelligently and voluntarily entering into the plea waiver. Counsel answered in the negative, but qualified his answer by noting: "Not being a psychologist or a psychiatrist ...- I'm not in a position, I suppose, to technically answer that". However, counsel was aware that the defense would later present evidence that Mr. Lawson had a history of mental health problems including a diagnosis of bipolar disorder at age 13 as well as depressive disorder and post-traumatic-stress disorder in addition to involuntary psychiatric hospitalizations and a significant history of medication throughout his life to ameliorate the foregoing conditions.

During the plea colloquy the Court learned that prior to and during the time of the entry of guilty plea, Mr. Lawson was taking several medications including Naproxen, Vistaril, Metronidazole and Zoloft. No inquiry was made regarding the reasons for these medications or their effect on the decision-making process beyond asking Mr. Lawson himself if he felt they affected his decision-making process or clarity of thought and asking counsel if they noticed any such effects.

Fundamental principles of due process require that a criminal defendant who is legally incompetent shall not be subjected to trial. Due process places a duty on trial courts to conduct a competency inquiry and hearing whenever there is evidence before the court to raise sufficient doubt as to the competence of the accused. See *Pate v. Robinson*, 383 U.S. 375, 385; 86 S.Ct. 836, 15 L.Ed.2d 815 (1966); and *Drope v. Missouri* (1975), 420 U.S. 162, 180; 95 S.Ct. 896, 43 L.Ed.2d 103. In *Pate, supra*, this court held that the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives the defendant of the right to a fair trial. In *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824, 825 (1960), this court set forth the test to determine whether a defendant is competent to stand trial, stating that "... the 'test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational [**439] as well as factual understanding of the proceedings against him.'" The right to a hearing on the issue of competency rises to the level of a constitutional guarantee where the record contains "sufficient indicia of incompetence," such that an inquiry into the defendant's competency is necessary to ensure the defendant's right to a fair trial. See *Drope, supra*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103; *Pate, supra*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815.

This case presented ample indicia of incompetence which should have prompted the court to order a competency evaluation as this court suggested in *Drope*. As the dissent below pointed out, the trial court had before it three areas of concern that, taken together should have triggered the trial court's duty under this court's precedent to order competency examination. Specifically these were: (1) the fact that Lawson was acting against the advice of counsel (2) the fact that Lawson exhibited indecisiveness and (3) the fact that Lawson was taking prescription medications to control unspecified behavioral or psychiatric conditions. (See *State v. Lawson*, 2021-Ohio-3566, Bruner, dissenting at ¶ 202)

The majority of the Ohio Supreme Court agreed that the foregoing factors were evident. However, as in *Drope*, the question became how those factors were to be interpreted. "...the dispute concerns the inferences that were to be drawn from the undisputed evidence and whether, in light of what was then known, the failure to make further inquiry into petitioner's competence to stand trial, denied him a fair trial." *Drope*, at 174-175 U.S. The majority below found reasons to dismiss each of these factors when considered individually, most under state standards established in non-capital settings. What the majority failed to do below is consider the factors cumulatively to determine if, as this court requires, that there was sufficient indicia of incompetence to trigger an inquiry. In *Drope* this court found this piecemeal approach inadequate to insure that the defendant's constitutional rights were adequately safeguarded. "Moreover, in considering the indicia of petitioner's incompetence separately, the state courts gave insufficient attention to the aggregate of those indicia..." *Drope*, at 179-180 U.S. The appellant suggests that the decision of a defendant to waive a jury and plead guilty to multiple capital murder counts requires at very least heightened scrutiny to insure that states order a competency examination prior to acceptance of a plea of guilty when the death penalty is in play.

This court's decision in *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836 (1966) makes clear that state procedures must be adequate to insure that only defendants who are competent may be brought to trial.


Drope requires the trial court to *sua sponte* conduct an inquiry into competency if there are sufficient factors giving rise to a bona fide question regarding competency of the defendant. In the present case there were ample red flags that, taken together, should have prompted the court to *sua sponte* have ordered a qualified competency examination. However, the trial court failed to do so, despite its "second guessing" of its own earlier decision to not order an examination.

On review the Ohio Supreme Court failed to follow the direction of this court in *Drope* to analyze the factors collectively. In *Drope* this court noted that the signs which indicate the need for further inquiry arise in a "wide range of manifestations..." thereby indicating that courts must take a comprehensive view of all factors together. *Drope*, at 189 U.S. The Ohio Supreme Court's analysis in this case was the opposite. The majority below separated each factor and discussed why it could possibly not be an indicator of incompetency, never considering the totality of all of the circumstances. As such, the decision of the Ohio Supreme Court is contra to well settled precedent of this Court.

CONCLUSION

Based upon the foregoing argument and authorities the Petition for Writ of Certiorari should be granted.

Respectfully submitted,


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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari was served by regular U.S. mail postage pre-paid to the Brigham M. Anderson, Lawrence County Ohio Prosecuting Attorney at 408 Park Ave. P.O. Box 712 Ironton, Ohio 45638 and upon Stephen E. Maher and Margaret S. Moore, Special Assistant Prosecuting Attorneys at the office of The Ohio Attorney General at 150 East Gay St., 16th Floor Columbus, Ohio 43215 this 5th day of January, 2022.


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