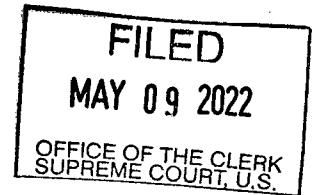


No. _____

21 - 7879

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



STANLEY R. COOKSTON — PETITIONER,

vs.

THE STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO
THE FIFTH DISTRICT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

STANLEY COOKSTON
Tomoka Correctional Institution
3950 Tiger Bay Rd.
Daytona Beach, FL 32124

QUESTION(S) PRESENTED

The Fifth District Court of Appeal reversed and remanded this case for the trial court to determine whether it could conduct a hearing to determine Cookston's competency at the time of trial. The trial court never made this determination; instead, the judge simply took testimony from Cookston's trial attorney, made her own comments, and cited a stale competency evaluation that took place 11 months prior to trial, and two and half years prior to the hearing. The evaluation suggested Cookston's condition be closely monitored and that a reevaluation may be required. Was Cookston's Constitutional Rights to due process and a fair trial violated by the trial court making a retrospective determination of competency a year and half after trial?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

1. The Fifth Judicial Circuit, State of Florida, Case No.: 2017-CD-000576
2. The Fifth District Court of Appeal, State of Florida, Case No.: 5D19-2523
3. The Fifth District Court of Appeal, State of Florida, Case No.: 5D21-0881

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Mr. Cookston respectfully prays that a writ of certiorari issue to review the judgment of the Eighteenth Judicial Circuit in and For Seminole County, Florida, and the *per curiam* affirmance of that decision by the Fifth District Court of Appeal, Florida.

OPINIONS BELOW

The opinion of the highest State Court to review the merits appears at Appendix A to the petition and is reported at *Cookston v. State*, (Fla. 5th DCA 2022) which is the affirmance of the order rendered by the 18th Judicial Circuit in Case No.: 17-CF-0576-A.

JURISDICTION

The date of which the highest state court decided Cookston's case was on January 4, 2022. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: March 3, 2022, and a copy of the order denying rehearing appears at Appendix B

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions involved in this petition are the 5th and 14th Amendment rights to due process and a fair trial.

Amendment 5

Criminal actions Provisions concerning Due process of law and just compensation clauses.

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 offense 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.

Amendment 14

Section 1. [Citizens of the United States.]

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.

STATEMENT OF THE CASE

Prior to trial, Cookston's trial counsel requested a competency evaluation because he was concerned with the Cookston's ability to assist him. Cookston was evaluated by Dr. Mings, and although deemed competent at the time—11 months prior to trial, Dr. Mings had some serious reservations:

He is currently relatively stable with psychiatric medication management, and abstinence as a result of incarceration. From a clinical viewpoint, he is clearly in need of intensive long-term residential dual diagnosis treatment for his mental illness and substance abuse. Though I believe he is competent to proceed, I would suggest that his condition be closely monitored in the proceedings against him, and if he should deteriorate and begin to show more overt evidence of a manic episode, a reevaluation of competence to proceed may be required. (See Appendix E, Dr. Mings Competency Report)

Counsel stipulated to Cookston's competency and the Court never held a hearing or entered a competency order.

On June 3, 2019, a jury trial commenced. Counsel never monitored Cookston, never requested a reevaluation, and only interacted with him briefly at trial.

On June 4, 2019, the jury returned a guilty verdict for Armed Burglary.

On August 19, 2019, Cookston was sentenced to life imprison.

Cookston filed a direct appeal under Case No. 5D19-2523. On appeal, Defendant raised one ground: Trial Court committed fundamental error when it failed to hold a competency hearing and enter a competency order.

On July 10, 2020, The Fifth District Court reversed and remanded for the trial court to determine whether it could conduct a hearing to retroactively determine Cookston's competency at the time of trial. (See Appendix C, Fifth District's Reverse and Remand)

On January 21, 2021, over a year and half after trial and two and half years after the only competency exam, the Court held a hearing.

Following the hearing, on April 8, 2021, the Court issued an order finding Cookston competent *nunc pro tunc* to February 27, 2019. (See Appendix D)

Cookston again appealed to the Fifth District Court of Appeals under Case No. 5D21-0881.

On January 4, 2022, the Fifth District Court *per curiam* affirmed Cookston's conviction. Cookston filed a Motion for Rehearing, Rehearing En Banc, Certification, and/or Written Opinion which was denied on March 3, 2022.

In Florida, without an opinion in the district court, there is no right to review in the Florida Supreme Court; thus, making the district court the highest court of review in this case.

REASONS FOR GRANTING THE PETITION

The trial court erred in making a retrospective determination of competency in this case. Although Cookston asserts that he was, in fact, incompetent at the time of trial, the question here is not whether Cookston was incompetent, but whether the proceedings in this case were consistent with Cookston's right to due process and a fair trial.

The failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial. *Pate v Robinson*, 383 US 375, 15 L Ed 2d 815, 86 S Ct 836 (1966)

This Court has "emphasized the difficulty of retrospectively determining an accused's competence to stand trial," and has indicated its lack of confidence in the efficacy of a hearing conducted for this purpose:

- In *Dusky v United States*, *supra*, based on the doubts and ambiguities regarding the legal significance of the psychiatric testimony and the resulting difficulties of retrospectively determining Dusky's competency as of *more than a year ago*, this Court reversed the conviction and remanded for a competency hearing and a new trial if Dusky was found competent.
- In *Pate v Robinson*, *supra*, this Court held that Robinson was constitutionally entitled to a hearing on the issue of his competency to stand trial, but since *it was too late to conduct a meaningful hearing*, the case was remanded with directions that Robinson be discharged after affording the state an opportunity to try him again within a reasonable time. Additionally, a stipulation was tendered that a psychiatrist who had examined Robinson two or three months before trial would testify that Robinson was competent to assist in his defense. *The stipulation appears to have been regarded by the Supreme Court as too remote from time of trial to be of great probative value*. See *Conner v Wingo*, 429 F.2d 630, FN. 1 (6th Cir. 1960)
- In *Drope v. Missouri*, 95 S.Ct. 896, 43 LED 2D 103, 420 US 162 (1975), this Court determined that Drope's due process rights would not be adequately protected by remanding the case for a psychiatric examination aimed at establishing his competency at the time of trial. Given the inherent difficulties of such a *nunc pro tunc* determination under the most favorable circumstances, the Court held that it could not conclude that such a procedure would be adequate.

In the instant case, the District Court reversed ordering the lower court to determine if it could determine Cookston's competency a year and half after trial. The trial court never addressed this issue, it simply plowed forward and determined Cookston's competency based on trial counsel's comments, the judge's own observations, and a stale competency evaluation that was done 11 months prior to trial and over two and half years prior to the retrospective determination. At the hearing, the defense never stipulated to the doctors findings in the evaluation, and such a stale evaluation would have very little, if any, probative value. No doctor or expert has ever given any testimony in this case. And no one who interacted with Cookston contemporaneously with trial (including jail personnel, jail doctors and nurses, correctional officers, other inmates, friends, or family members) gave any statement or was conferred with by trial counsel or the Court.

In the competency evaluation, Dr. Mings found Cookston competent to proceed, but suggested that his condition be closely monitored, and if he should deteriorate and begin to show more overt evidence of a manic episode, a reevaluation of competence to proceed may be required. Dr. Mings never observed Cookston contemporaneous with trial, never gave any testimony at any court proceeding, and never spoke with counsel or the court after the examination. Neither counsel nor the Court monitored Cookston's condition. In those 11 months, counsel never visited Cookston once and never had any interaction with him other than trial itself. Counsel never communicated with anyone regarding Cookston's mental condition and was even suspended from the bar for 3 of those 11 months.

At the hearing, the Judge commented that she remembered the trial and remembered that Cookston answered her questions relevantly and behaved appropriately. Cookston said exactly three things during trial: "Thank You, Your Honor"; "Yes Ma'am"; and "No Ma'am"—hardly an in-depth interaction or proof of competence. Cookston was medicated to the point

he was in a stupor so he did not have the mental or physical capability to have an outburst.

Trial counsel originally requested a competency hearing because he felt that Cookston was unable to communicate and assist with the case. The test of incompetence seeks to ascertain whether a criminal defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding-and whether he has a rational as well as factual understanding of the proceedings against him.' " *Dusky v United States*, 362 US, at 402, 4 L Ed 2d at 824, 80 S Ct 788. The test is whether he has substantial capacity to comprehend the nature and consequences of the proceeding pending against him and to participate rationally in his defense. *Commonwealth v. Strickland*, 375 S.W.2d 701, 703 (Ky. 1964).

When trial counsel, the adversarial party at the hearing, was asked if Cookston assisted during jury selection, counsel could not remember if he assisted or left it up to him. He stated that there was very little that they disagreed on. In fact, he never specifically stated a single thing they disagreed on or a single thing Defendant said during trial. He couldn't recall whether the Defendant was even on any medication at the time of trial (Appendix E, p. 20) and stated that he had no contact with jail personnel and never reviewed any jail medical records.

Cookston has a long history of mental health issues and poly-substance abuse. At the time of trial he was prescribed Remeron and Zyprexa daily, both of which are psychotropic medications. The effects of psychotropic medication has been well documented and there are serious concerns that an incompetent defendant may appear competent when he is not. Only a portion of those prescribed actually attain "chemically induced competency." Cookston is not one of those.

During the 11 months between the competency evaluation and trial, Cookston's condition deteriorated. Cookston's dosage changed, he became depressed, lethargic, apathetic, disinterested, unable to organize his thoughts, and unable to effectively communicate or assist his attorney. Due to a loss of appetite, he lost around 15 pounds, and spent most of his days in a depressed state trying to sleep. At trial, he could not pay attention and nodded off several times. He was unable to assist his attorney at any stage of trial. If Cookston had been reevaluated at the time of trial, he would have been found legally incompetent.

At the Competency Hearing, Cookston was asked about things that occurred contemporaneously with trial, he repeatedly stated that he couldn't remember due to his medication. (Appendix E, p. 10) He testified that "my medication has me in and out ... I still have a hard time sleeping," (Appendix E, p. 11) and "my medication had me in and out, and I still have a hard time today, but I'm better off without my medication with my situation because of where I'm at." (Appendix E, p. 13)

Cookston's condition deteriorated to the extent that he was afraid for his own safety and ceased all medication as soon as he got to prison. Memory loss, nodding in and out, and being unable to sleep are all signs of deterioration and all contributed to Cookston's inability to communicate or assist counsel at trial, making him incompetent to stand trial.

At trial, Cookston was not competent. He was unable to communicate with or assist his attorney, he was unable to pay attention and follow the proceedings, and he nodded off several times, which the jury observed. In fact, counsel noticed this and chastised him by telling him to pay attention and take notes. Defendant's attorney spoke so loudly that the prosecution and the court repeatedly reprimanded him.

Although Florida Supreme Court has held that “determining competency to stand trial retrospectively is inherently difficult ... a *nunc pro tunc* competency evaluation could be done where there are a sufficient number of expert and lay witnesses who have examined or observed the defendant contemporaneous with trial available to offer pertinent evidence at a retrospective hearing.” *Daugherty v. State*, 149 So.3d 672 (Fla. 2014) According to the Florida Supreme Court, there are three elements that must exist in order for a viable retroactive determination: (1) There must be a “sufficient number of expert **and** lay witnesses”; (2) those witnesses **must** have “examined or observed the defendant **contemporaneous** with trial”; and (3) those witnesses **must** be “available to offer pertinent evidence at a retrospective hearing.” In the instant case, there were no expert witnesses who examined or observed Cookston contemporaneous with trial. No expert witnesses provided any evidence at the retrospective hearing. The only lay witnesses were the Judge and trial counsel who both only interacted with Cookston at trial in a very limited capacity. The lower court simply did not follow the corrective process delineated in *Daugherty*.

“When the corrective process is provided by the state but error, in relation to the federal question of constitutional violation, creeps into the record, we have the responsibility to review the state proceedings.” *Hawk v. Olson*, 326 U.S. 271, 276, 66 S. Ct. 116, 90 L. Ed. 61 (1945)

Furthermore, the trial court's order inexplicably not only retrospectively found Cookston competent at the time of trial, but also found him competent at the hearing. The latter determination was made without any medical evaluation or review, which is disturbing considering the fact that Cookston was no longer on any medication and Dr. Mings' report had specifically stated he was only “stable with psychiatric medication management and

abstinence." The lower court violated Cookston's constitutional rights and reversal is warranted.

In some circumstances, like the one here, the only appropriate remedy may be a retrial after a current hearing on competence. *Hansford v. United States*, 124 U.S.App.D.C. 387, 365 F.2d 920 (1966); *Rhay v. White*, 385 F.2d 883 (9th Cir. 1967)

In light of the testimony adduced at the hearing and the lack of any competent substantial evidence to prove Cookston was competent over a year and half earlier, there is no way the trial court could have made a retrospective determination of competency. The medical evaluation was stale and had little if any probative value to Cookston's competency at the time of trial.

The holding in this case encourages the State to pump defendants that may be suspected of incompetency full of psychotropic medication and then, based on comments by the Judge and trial counsel, find them competent. The hearing was a farce and it does not adequately justify disregarding this Court's or the Florida Supreme Court's clear preference for a current determination of competence and a new trial if a petitioner is found competent.

CONCLUSION

Wherefore, Cookston respectfully asks this Honorable Supreme Court to grant him certiorari relief and remand this case back to the Circuit Court for a competency determination and a new trial.

Respectfully submitted,



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Date: May 9, 2022