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Summary of Scarbo v. Dist. Ct., 125 Nev. Ad. Op. No. 12

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CRIMINAL LAW- RIGHT TO COMPETENCY REPORTS

Summary

Consolidated writs for mandamus challenging the district court's denial of petitioners' request for full and complete copies of competency examination reports prior to competency hearing.

Disposition/Outcome

Petitions granted holding defendants are entitled to full and complete copies of their competency reports prior to their competency hearings in order to provide defendant their fundamental due process rights.

Factual and Procedural History

In January 2008, the State filed felony criminal charges against petitioners Christopher John Scarbo and Scott David Roebke. At trial, defense counsel expressed doubts that their clients were competent to stand trial. The district court suspended proceedings and invoked the state's competency procedure by appointing three psychologists to evaluate the defendants and prepare reports regarding their competency. These evaluations and reports were used at the competency hearings. Defense counsel requested full and complete copies of the competency reports to use at the hearing but the district court denied these requests and instead provided defense counsel with summary versions of the reports. At the competency hearing, the district court found the defendants competent to stand trial. Subsequently, defense counsel renewed their request for full and complete copies of the reports. These requests were once again denied. Defense counsel then moved to stay the proceedings in order to challenge the district court's refusal. These motions were also denied. Next, defense counsels filed these petitions for writ of mandamus and moved to stay the proceedings in the district court pending resolution of this issue. On February 27, 2008, the Court entered temporary stays.

Discussion

Standard for writ of mandamus

Writs of mandamus are used to "compel the performance of an act which the law requires as a duty resulting from an office or where discretion has been manifestly abused or exercised arbitrarily or capriciously."² Whether the court will entertain a petition for mandamus requires that there be no "plain, speedy and adequate remedy. . . in the ordinary course of the law."³ The decision to entertain a mandamus petition is ultimately at the discretion of the court.⁴ The Court

¹ By Michelle D. Alarie

² *Redeker v. Dist. Ct.*, 127 P.3d 520, 522, 122 Nev. 164, 167 (2006); *see* NEV. REV. STAT. § 34.160 (2007).

³ *Hickey v. Dist. Ct.*, 782 P.2d 1336, 1338, 105 Nev. 729, 731 (1989); NEV. REV. STAT. § 34.170 (2007).

⁴ *Hickey*, 782 P.2d, at 1338.

properly exercised its discretion in this case because an important issue of law required clarification.⁵

Competency Procedure

It is a fundamental right of criminal defendants to not be tried while incompetent.⁶ Nevada has instituted a competency procedure to prevent the prosecution of mentally incompetent persons.⁷ Once a court has any doubt as to the competency of a defendant, the court must suspend the proceeding and hold a hearing to determine the defendant's competency. This issue is resolved at a hearing by determining whether the defendant understands the nature of the criminal charges, the nature and purpose of the criminal proceeding, and by his or her ability to aid and assist counsel in the defense with a reasonable degree of rational understanding.⁸

If the court finds that further competency proceedings are required, it appoints psychiatrists and/or psychologists to examine the defendant and prepare a competency report.⁹ The court appointed examiners may also meet with defense counsel to develop a full understanding of the defendant's abilities.¹⁰ This ensures that the competency report considers a wide variety of relevant evidence.¹¹ The court must receive a copy of the report.¹² During the competency hearing, defense counsel and opposing counsel may question the court appointed examiners and introduce other relevant evidence.¹³ At the conclusion of the hearing, the court shall enter its findings as to competency.¹⁴ If the defendant is competent, then the trial will proceed, however, if incompetent, the court shall order treatment consistent with NEV. REV. STAT. § 178.425. Upon completion of treatment, the Administrator of the Division of Health and Developmental Services of the Department of Health and Human Services or an appropriate designee evaluate the defendant and report, in writing, to the court whether the defendant is now competent to stand trial.¹⁵ The Administrator must maintain a copy of the evaluation report and send a copy of this report to the district attorney and defense counsel after the treatment is complete.¹⁶ After receiving a copy of the report, either counsel may request a hearing.¹⁷

Competency Reports

The Court noted that after the defendant has been deemed incompetent to stand trial and has received treatment, a full and complete copy of the competency examination report issued

⁵ See *State v. Dist. Ct. (Epperson)*, 89 P.3d 663, 665-66, 120 Nev. 254, 258 (2004).

⁶ This right is grounded in fundamental principles such as the right to a fair trial and the right to due process under the Fourteenth Amendment of the United States Constitution. *Olivares v. State*, 195 P.3d 864, 868, 124 Nev. ___, ___ (2008); see NRS 178.400; see also U.S. Const. amend. XIV.

⁷ NEV. REV. STAT. § 178.400 *et seq.* (2007).

⁸ *Calvin v. State*, 147 P.3d, 1097, 1100, 122 Nev. 1178, 1182-83 (2006).

⁹ NEV. REV. STAT. § 178.415(1) (2003).

¹⁰ *Calvin*, 147 P.3d at 1100.

¹¹ *Id.*

¹² NEV. REV. STAT. § 178.415(2) (2003).

¹³ NEV. REV. STAT. § 178.415(3) (2003).

¹⁴ NEV. REV. STAT. § 178.415(4) (2003).

¹⁵ NEV. REV. STAT. § 178.455(1) (2007).

¹⁶ NEV. REV. STAT. § 178.455(3) (2007).

¹⁷ NEV. REV. STAT. § 178.460 (2007).

pursuant to NEV. REV. STAT. § 178.455(3) must be sent to defense counsel and the district attorney. However, NEV. REV. STAT. § 178.415 is silent as to whether full and complete copies

The United States and Nevada constitutions require notice and an opportunity to be heard before the government can deprive a citizen of liberty.¹⁸ Commitment to a psychiatric facility is a deprivation of liberty; therefore Nevada's statutory competency proceedings must afford the defendant with proper notice and a meaningful opportunity to be heard. This Court has determined that fundamental notions of due process require that defense counsel must be given a full and complete copy of the competency examination report prior to any competency hearing. If the defendant is not represented by counsel, then the report is to be sent directly to the defendant. Providing the defendant with a full and complete copy of the competency examination report prior to any competency hearing comports with due process as it allows the defendant to marshal the facts and prepare his defense.¹⁹ In denying defense counsels' requests for full and complete copies of the competency examination reports prior to the hearings, the District Court denied the defendant the opportunity to be heard, and thus denied the defendant his right to due process. Accordingly, the court held that a full and complete copy of the competency examination report must be sent to defense counsel prior to any competency hearing.

Conclusion

In order to comport with fundamental notions of due process, a full and complete copy of a competency examination report must be sent to the district attorney and to defense counsel prior to a competency hearing held pursuant to NEV. REV. STAT. § 178.415. Accordingly, the Court ordered that writs of mandamus be issued directing the district court to vacate its prior competency findings and conduct new competency hearings where defense counsel will be provided with a full and complete copy of the competency examination report prior to the hearing.

¹⁸ Maiola v. Nevada, 99 P.3d 227, 229, 120 Nev. 671, 675 (2004).

¹⁹ Wolff v. McDonnell, 418 U.S. 539, 564 (1974).