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Summary of Calvin v. State, 122 Nev. Adv. Op. 100

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***Calvin v. State*, 122 Nev. Adv. Op. 100 (Dec. 14, 2006)¹**

CRIMINAL LAW-COMPETENCE FOR TRIAL

Summary

NRS 178.400, Nevada's standard for a defendant's competency to stand trial, conforms to the standard set out by the United States Supreme Court in *Dusky v. United States*.²

Disposition/Outcome

Affirmed Calvin's judgment of conviction and sentence.

Factual and Procedural History

Appellant Ronald O'Neal Calvin was charged with two counts of first-degree murder with the use of a deadly weapon and two counts of robbery with the use of a deadly weapon. An issue arose as to his competency to stand trial, and in 1999, he was evaluated at Lake's Crossing and found to be competent. The trial date was continued a number of times over the course of four years. Two new defense counsels were apparently assigned to Calvin's case in early 2005, and they again raised questions about Calvin's competency.

At a hearing on April 5, 2005, defense counsel informed the district court that although Calvin understood the legal proceedings, he had difficulty assisting counsel. In later hearings, the prosecutor expressly stated that the *Dusky* standard governed in Nevada and conceded that the ability to assist counsel was necessary for a defendant to be competent.

At the April 5 hearing, the district court appointed two psychologists to evaluate Calvin: Dr. Greg Harder and Dr. Marvin Glovinsky. The defense requested that the psychologists receive Calvin's Lake's Crossing records, but the district court ordered that they receive only a copy of his discharge summary from Lake's Crossing. The district court also ordered the parties not to contact the psychologists. Dr. Harder found that Calvin was mentally ill, but both he and Dr. Glovinsky submitted reports finding Calvin competent to stand trial. Dr. Harder subsequently advised defense counsel that he had evaluated Calvin under the standard of NRS 178.400(2), but that under the standard of *Dusky*, which Dr. Harder believed emphasized a "'rational' understanding of the charges and ability to assist counsel," Calvin's competency was "less conclusive." A defense expert, Dr. Michael Krelstein, also examined Calvin and concluded he was not competent to stand trial.

The district court held a competency hearing on June 27, 2005. The defense did not call Dr. Krelstein to testify but did call Dr. Elizabeth Neighbors, a psychologist and the director of Lake's Crossing. She stated that despite the language in NRS 178.400, she and her colleagues followed *Dusky* and NRS 178.455. She also testified that it was preferable for an evaluator to consult with a defendant's counsel and have access to the defendant's medical records, family history, and jail records when evaluating competency. Two other defense expert witnesses were not allowed to testify.

¹ By Michelle L'Hommedieu

² 362 U.S. 402 (1960).

At the end of the hearing, the district court stated that it had not heard any evidence indicating that Calvin was not competent but would nevertheless appoint a third doctor to evaluate him. At the next hearing on July 12, 2005, however, the district court judge overruled the previous decision stating that after the competency hearing and reviewing the documents, Mr. Calvin is competent to proceed. At a hearing on July 19, the district court added "when we were here last and I ruled that I found Mr. Calvin to be competent, I failed to mention that it was under the *Dusky* standard, which is what I was considering."³

Calvin filed a petition for a writ of mandamus or prohibition declaring NRS 178.400(2) unconstitutional, which was denied.⁴ Calvin later pleaded guilty to two counts of first-degree murder with the use of a deadly weapon; he then unsuccessfully moved to withdraw his guilty plea. On January 6, 2006, he was sentenced to four consecutive terms of life in prison without the possibility of parole. This appeal followed.

Discussion

NRS 178.400 states:

1. A person may not be tried or adjudged to punishment for a public offense while he is incompetent.

2. For the purposes of this section, "incompetent" means that the person is not of sufficient mentality to be able to understand the nature of the criminal charges against him, and because of that insufficiency, is not able to aid and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter.

Under *Dusky*, a defendant is competent to stand trial if he "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "he has a rational as well as factual understanding of the proceedings against him."⁵

Despite the variance in language between *Dusky* and the statute, *Dusky* is recognized as the governing standard, and, without comment, the Court has interpreted the statute as consistent with that standard.⁶ The Court specified that, consistent with *Dusky*, under Nevada statutory law a defendant is incompetent to stand trial if he either "is not of sufficient mentality to be able to understand the nature of the criminal charges against him" or he "is not able to aid and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter."

Calvin also argued that his competency proceedings were inadequate because the district court improperly limited the information Drs. Harder and Glovinsky could consider in evaluating him and excluded two witnesses from testifying, and that his guilty plea is therefore invalid. NRS 178.415(3)(a) gives slight guidance in these respects, stating only that in a hearing on a defendant's competency, the prosecutor and the defendant may introduce other evidence including, without limitation, evidence related to treatment to competency and the possibility of ordering the involuntary administration of medication. The United States Supreme Court has noted that evidence of a defendant's irrational behavior, his demeanor at trial, and any prior

³ 122 Nev. Adv. Op. No. 100, at *4 (2006).

⁴ Calvin v. Dist. Ct., Docket No. 45926 (Order Denying Petition, October 4, 2005).

⁵ *Dusky*, 362 U.S. at 402 (internal citations omitted).

⁶ See, e.g., Hill v. State, 114 Nev. 169, 176, 953 P.2d 1077, 1082 (1998); Melchor-Gloria v. State, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983).

medical opinion on competence to stand trial are relevant factors in assessing competency.⁷ Counsel's expressed doubt about her client's competency is also relevant, given her "close contact" with the defendant.⁸

While conviction of an accused that is legally incompetent violates due process,⁹ an accurate competency evaluation is therefore critical to avoiding a violation of the defendant's constitutional rights. Accuracy is best served when the district court and any appointed experts consider a wide scope of relevant evidence at every stage of the competency proceeding, including initial doubts as to the defendant's competency, the experts' evaluation, and the hearing after the evaluation. However, the district court need not peruse every record and hear testimony from every witness the State or defense may wish to present; all evidence must still be relevant to the ultimate issues of whether the defendant understands the nature of the proceedings against him and can assist his counsel in his defense. Relevant evidence may also be excluded under NRS 48.035(2) "if its probative value is substantially outweighed by considerations of undue delay, waste of time or needless presentation of cumulative evidence."

Here, accuracy would have been better served by allowing Drs. Harder and Glovinsky to consider Calvin's medical and psychiatric history and to discuss with Calvin's counsel his ability to assist them up to that time. However, the Court was unable to determine whether anything in his medical or psychiatric history or any statements from his counsel would have led the appointed experts or the district court to determine that he was not competent because Calvin did not provide information to the Court.

Regarding the two witnesses Calvin wished to call at the competency hearing, Calvin failed to object to the exclusion of their testimony. Thus, he failed to preserve this matter for appeal and must demonstrate plain error.¹⁰ Because the Court affirmed that the state and federal competency standards are identical, Calvin failed to demonstrate that testimony from Mr. Pescetta about the alleged differences between the standards was relevant to a determination of his competency. While Ms. Reader's testimony may have been relevant, the district court refused to allow her to testify until she turned over her notes of her meetings with Calvin to the State. Calvin did not demonstrate that this condition was improper. Further, Calvin failed to state how either witness's testimony would have led the district court to conclude he was not competent.

Conclusion

The Court therefore affirmed Calvin's judgment of conviction and sentence.

⁷ *Drope v. Missouri*, 420 U.S. 162, 180 (1975).

⁸ *Id.* at 177 n.13.

⁹ *Krause v. Fogliani*, 82 Nev. 459, 462, 421 P.2d 949, 950-51 (1966).

¹⁰ *See* NEV. REV. STAT. § 178.602 (2005); *Herman v. State*, 122 Nev. ___, ___, 128 P.3d 469, 474 (2006); *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).