IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1999 Term

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No. 25368

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STATE OF WEST VIRGINIA,
Appellee

v.

STEPHEN W. HATFIELD,
Appellant

Appeal from the Circuit Court of Wayne County
Honorable James O. Holliday, Senior Judge
Criminal Action No. 88-F-26

AFFIRMED

Submitted: June 8, 1999
Filed: July 15, 1999

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The Opinion of the Court was delivered PER CURIAM.

JUSTICE MAYNARD, deeming himself disqualified, did not participate in the decision of this case.
JUDGE DANNY O. CLINE sitting by special assignment.

CHIEF JUSTICE STARCHER and JUSTICE MCGRAW dissent and reserve the right to file a dissenting opinion.

SYLLABUS BY THE COURT

1. "Where a circuit court has found that a defendant in a criminal case where the possible punishment is life imprisonment without mercy is competent to stand trial, but subsequent to the competency hearing, the defendant attempts to commit suicide, then against advice of counsel indicates his desire to plead guilty to the charges in the indictment, before taking the plea of guilty, the trial judge should make certain inquiries of the defendant and counsel for the defendant in addition to those mandated in Call v. McKenzie, 159 W. Va. 191, 220 S.E.2d 665 (1975). The court should require counsel to state on the record the reason why counsel opposes the guilty plea. The court should then ask the defendant to acknowledge on the record that he understands his counsel's statements and if in view of them he still desires to plead guilty. If the defendant then states he still desires to plead guilty, the court may accept the plea." Syl. Pt. 6, State v. Hatfield, 186 W. Va. 507, 413 S.E.2d 162 (1991).

Per Curiam:

This case is before the Court upon the appeal of the Appellant, Stephen W. Hatfield, from the January 28, 1998, order of the Circuit Court of Wayne County, Senior Judge James Holliday, presiding,[1] wherein the lower court, pursuant to this Court's directive in State v. Hatfield, 186 W. Va. 507, 413 S.E.2d 162 (1991) (referred to as Hatfield I), once again determined that the Appellant was competent at the time he entered his original guilty pleas to one count of first degree murder and two counts of malicious assault and denied the Appellant's request to withdraw his guilty pleas. The lower court then ratified the previous sentence imposed upon the Appellant, that being life with no mercy for the first degree murder and two to ten years for each malicious wounding charge. The Appellant argues that the circuit court erred: 1) in refusing to follow the express directives of this Court after remand of the Appellant's case; and 2) in denying the Appellant due process of law by its entry of convictions based upon the Appellant's refusal to enter pleas of guilty and demand for a jury trial. Based upon a review of the record, the briefs and arguments of the parties, as well as all other matters submitted before this Court, we affirm the lower court's decision.

[1]The final order was entered by Judge Holliday; however, Judge Elliot Maynard was the Special Judge who presided over the original criminal case, as well as the remand proceedings.

I. FACTS

The Appellant's original guilty pleas arose out of a May 8, 1988, incident in which the Appellant murdered his ex-girlfriend, Tracey Andrews, shot and wounded Ms. Andrews' boyfriend, Dewey Meyers, and also shot and wounded an innocent bystander, Roger Cox. The Appellant fled the crime scene and ultimately was wounded and captured by police after an exchange of gunfire.

Following indictment on one count of first degree murder and two counts of malicious wounding, the Appellant, while recuperating from gunshot wounds, attempted suicide. See Hatfield I, 186 W. Va. at 509, 413 S.E.2d at 164. Subsequent to the suicide attempt, proceedings occurred before the lower court regarding the Appellant's mental competency. Id. A competency hearing occurred and in a subsequent order, the lower court determined that the Appellant was competent to stand trial. After the competency determination was made, the Appellant once again attempted to commit suicide. Id. at 511, 413 S.E.2d at 166. After this second attempt at suicide occurred, the Appellant decided to plead guilty to all three counts in the indictment. Id. The entry of the guilty pleas occurred, despite the Appellant's trial lawyers' advice against it. Id. Upon entry of the guilty pleas, the circuit court sentenced the Appellant to life without mercy for first degree murder and two to ten years for each malicious wounding charge. Id.

The Appellant originally appealed to this Court "rais[ing] arguments with respect to the appellant's competence and the circuit court's acceptance of the guilty plea." Id. In dealing with the issues raised, this Court was concerned not only with the fact that the Appellant had attempted suicide[2] after being adjudged competent to stand trial by the lower court, but also with the fact that the Appellant's guilty plea was entered against the advice of trial counsel. See id. at 512, 413 S.E.2d at 167. Consequently, this Court "remanded [this case] to the Circuit Court of Wayne County so that it may further develop the record in light of our opinion herein and particularly syllabus point 6." Id. at 514, 413 S.E.2d at 169. The new law enunciated by this Court in syllabus point six of Hatfield I, which we specifically directed the lower court to consider on remand, is as follows:

> Where a circuit court has found that a defendant in a criminal case where the possible punishment is life imprisonment without mercy is competent to stand trial, but subsequent to the competency hearing, the defendant attempts to commit suicide, then against advice of counsel indicates his desire to plead guilty to the charges in the indictment, before taking the plea of guilty, the trial judge should make certain inquiries of the defendant and counsel for the defendant in addition to those mandated in Call v. McKenzie, 159 W. Va. 191, 220 S.E.2d 665 (1975). The court should require counsel to state on the record the reason why counsel opposes the guilty plea. The court should then ask the defendant to acknowledge on the record that he understands

[2]The briefs filed in the instant case indicate that the Appellant has at least attempted suicide on two more occasions since the case was remanded.

> his counsel's statements and if in view of them he still desires to plead guilty. If the defendant then states he still desires to plead guilty, the court may accept the plea.

186 W. Va. at 508, 413 S.E.2d at 163.

On remand, the lower court sought to have the Appellant undergo another psychiatric evaluation by Ralph Smith, M.D., a psychiatrist, in order to "evaluat[e] the competency of the Defendant at the time he entered his guilty plea in December 1989 . . . ." The day after the hearing which resulted in the lower court ordering this additional psychiatric evaluation, the Appellant objected to the evaluation and indicated the he would not participate in it.

Consequently, on December 19, 1996, the competency hearing was conducted in which the Appellant's two trial attorneys testified regarding their respective objections to the Appellant's entry of guilty pleas in 1989. Essentially both attorneys argued that the Appellant was not competent to enter a guilty plea, based on the reports of psychologists and psychiatrists who examined the Appellant prior to the lower court's initial competency determination and indicated that the Appellant was intent on self-destruction and was interested only in self-punishment.[3]

[3] The lower court, on remand, reconsidered the following psychological information prior to its determination that the Appellant was competent to stand trial. Earnest Watkins, the Director of Psychology at West State Hospital reported that the Appellant was competent to stand trial, but was not criminally responsible for his actions. See Hatfield I, 186 W. Va. at 509-10, 413 S.E.2d at 164-65. Dr. Herbert C. Haynes, a

psychiatrist who examined and evaluated the Appellant, reported that the Appellant was not competent to stand trial, but not because the Appellant lacked comprehension of criminal proceedings, but because the Appellant suffers from major depression and an intense need for punishment as extreme as death. Dr. Haynes also found that the Appellant was not criminally responsible for his actions. Dr. Ralph Smith, a psychiatrist determined that the Appellant was competent to stand trial. See id. at 510, 413 S.E.2d at 165. Finally, Dr. Johnnie L. Gallemore, Jr., a psychiatrist who treated the Appellant, in a December 18, 1989, letter to the Appellant's trial counsel, stated that his diagnosis was consistent with Dr. Haynes and that the Appellant's decision to plead guilty was "significantly affected" by his illness.

It is significant to note that the standard for whether an individual is competent to stand trial/and or plead guilty is as follows:

> 'To be competent to stand trial, a defendant must exhibit 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.' Syllabus Point 2, State v. Arnold, [159] W. Va. [158], 219 S.E.2d 922 (1975); Syllabus Point 4, State ex rel. Williams v. Narick, [164] W. Va. [632], 264 S.E.2d 851 (1980).

Syl. Pt. 1, State v. Cheshire, 170 W. Va. 217, 292 S.E.2d 628 (1982).

Next, the trial court inquired of the Appellant as follows:

> The Court: So I will ask you now, Mr. Hatfield, sir, do you think you are competent today?
>
> . . . .
>
> The Defendant: Yes, sir, I feel competent today, your Honor.
>
> The Court: Okay. Mr. Hatfield, then, in view of that, I would like to ask you, sir, if you can acknowledge on the record that you understand what Mr. Chafin just now said. He was your counsel at the time.
>
> The Defendant: Yes.
> The Court: Do you understand what he said?
>
> The Defendant: Yes, I understand what Mr. Chafin said, your Honor.
>
> The Court: Then, based on that, based on what your lawyer has said, and your acknowledgment that you understand it, do you still desire to plead guilty?
>
> The Defendant: No.
>
> The Court: Do you want to withdraw this plea and stand a jury trial?
>
> The Defendant: Yes, I do, your Honor.

Despite the Appellant's desire to withdraw his guilty pleas, the circuit court reaffirmed the earlier guilty pleas, as well as the sentences previously imposed. After reviewing the evidence taken on remand, as well as all of the evidence of record, including the earlier transcripts and reports of psychiatric experts, the lower court

determined that the Appellant was competent at the time he entered the guilty pleas on February 27, 1989.

II. ISSUE

The sole issue before the Court is whether this Court in Hatfield I vacated the Appellant's earlier guilty pleas or simply ordered the lower court to reconsider the Appellant's guilty pleas in light of more fully developed evidence. The Appellant creatively argues that the decision in Hatfield I in essence vacated the original guilty pleas and, thus, the trial court's refusal to allow the Appellant to enter pleas of not guilty violated this Court's directive in Hatfield I.[4] In contrast, the Appellee argues that we did not order vacation of the guilty pleas; but rather, we ordered that the lower court to reconsider its earlier decision in light of more fully developed evidence, with the final disposition left with the trial court.

[4] The Appellant maintains that "[t]he actions of the Circuit Court, moreover, created a legal impossibility: convictions, without benefit of trial, based upon pleas of not guilty and a demand for a trial by jury." This argument is valid only if this Court had reversed the Appellant's convictions on appeal. The opinion issued in the first appeal indicates only a remand. We note that the Judgment Order entered in connection with the opinion by the Supreme Court Clerks' Office indicates that "said judgment be, and same is hereby, set aside, reversed and annulled." It is clear from the record, as well as our prior decision in Hatfield I, however, that the case was only remanded. The judgment order is simply incorrect and the discrepancy went unnoticed until it was brought to the Court's attention by the Appellee.

The Appellee directs this Court's attention to our prior decision in State v. Cheshire, 170 W. Va. 217, 292 S.E.2d 628 (1982), in support of its argument that the original guilty pleas were not vacated. In Cheshire, a case somewhat analogous to the instant proceeding, a defendant was convicted on guilty pleas of two offenses of forgery and uttering. The defendant argued that she was mentally incompetent and that the lower court erred in accepting her pleas and in denying her motion to set aside her convictions. Id. at 218, 292 S.E.2d at 628. The psychiatric examinations of the appellant indicated that she was competent to stand trial, but she would be unable to assist in the preparation of her own defense, because she was mentally retarded. Id. at 219, 292 S.E.2d at 629.

This Court determined in Cheshire, that the trial court failed to make any findings on the appellant's ability to assist counsel and on her understanding of the nature of the proceedings. Id. at 222, 292 S.E.2d at 633. The Court, however, did not vacate the appellant's guilty pleas. Instead, we remanded the case and directed the court to conduct another competency hearing so that it could make specific findings on the appellant's ability to assist counsel and on her understanding of the nature of the proceedings against her. Id. Unlike the instant case, we further stated in Cheshire that

"[i]f it is shown by a preponderance of the evidence that the appellant lacks either of these attributes her convictions must be set aside."[5] Id. at 223, 292 S.E.2d at 633.

While this Court's language in the instruction to the lower court as to what was to occur on remand in Hatfield I may not be a model of clarity, it is outlandish for the Appellant to suggest that we remanded this case to allow the Appellant to plead not guilty. It is clear that this Court's major concern in Hatfield I was "[t]he lack of questioning of the appellant by the circuit court with regard to the appellant's desire to plead guilty against the advice of counsel and the critical nature of such a decision." 186 W. Va. at 513, 413 S.E.2d at 168. Regarding the lack of questioning by the lower court, we further stated:

> Our review of the record in this case indicates that the inquiry of the appellant by the circuit court, under circumstances of most cases, would be adequate to satisfy the requirements to ensure protections of a defendant's constitutional rights.
>
> However, in this case, there is an overlay to the proceedings in the circuit court which, if not explored further by that court, may result in severe prejudice to the appellant. This involves: (1) the second suicide attempt by the

[5]Interestingly, after remand in Cheshire, the appellant once again sought relief from this Court which resulted in the second Cheshire decision. See State v. Cheshire, 173 W. Va. 123, 313 S.E.2d 61 (1984) (referred to as Cheshire II). In Cheshire II, we upheld the trial court's denial of the appellant's motion to vacate the guilty pleas, because "[t]he trial court on remand conducted further hearings, made detailed findings of fact, and found from a preponderance of the evidence that Cheshire was competent to enter the guilty pleas." Id. at 124, 313 S.E.2d at 62.

> appellant; and (2) the appellant's plea of guilty against the advice of counsel.

Id. at 512, 413 S.E.2d at 167. (Some emphasis added). Moreover, in footnote thirteen of the opinion the Court wrote:

> The appellant also contends that there was an insufficient factual basis to support the guilty plea which was accepted by the circuit court. Although this case is remanded for further determination with respect to whether the guilty plea was properly taken due to the question of competency, we believe that the factual basis supports acceptance of the guilty plea inasmuch as the allegations, if taken as true, are sufficient to support the convictions therefor.

Id. at 514, 413 S.E.2d at 169 n.13 (Some emphasis added). Obviously, had the Court vacated the guilty pleas, there would have been no need to uphold the factual basis for accepting the guilty pleas. Finally, our instruction to the lower court was that "it . . . further develop the record in light our opinion herein. . . ." Id. at 514, 413 S.E.2d at 169.

That this case was simply remanded for further development of the record and not to reverse, vacate, set aside, or otherwise give the Appellant an opportunity to withdraw his original guilty pleas is patently clear from the above-mentioned excerpts. In other words, the remand was clearly for a determination on whether the Appellant was competent on the date he originally entered his guilty pleas. It would be an absurdity to conclude that the issue on remand was simply whether the Appellant still desired to plead guilty. It was clear from the Appellant's petition for appeal which resulted in the

Hatfield I decision that the Appellant's desire was to change his guilty pleas and have his convictions reversed. This Court clearly could have granted the Appellant his desired relief in Hatfield I without any need for remand, had the Court intended to hinge reversal on whether the Appellant still wanted to plead guilty.

Finally, had this Court meant, in any way, to vacate the Appellant's original guilty pleas, we would have expressly stated such. See State v. Myers, ___ W. Va. ___, ___, 513 S.E.2d 676 , 692 (1998)("In view of the matters presented, Mr. Myers' conviction and sentence are reversed. This case is remanded with instructions that he be permitted to withdraw from the plea and his plea agreement."); State v. Harlow, 176 W. Va. 559, 561-62, 346 S.E.2d 350, 353 (1986) ("We, therefore, conclude that the relator's request to set aside his pleas made prior to his sentence should have been granted, and a moulded writ of habeas corpus is, therefore, issued directing that his pleas be set aside."); Cheshire I, 170 W. Va. at 223, 292 S.E.2d at 633 ("[i]f it is shown by a preponderance of the evidence that the appellant lacks either of these attributes [regarding mental competency] her convictions must be set aside"); State v. Olish, 164 W. Va. 712, 717, 266 S.E.2d 134,137 (1980)("We, therefore, conclude that the defendant's request to set aside his guilty plea made prior to his sentence should have been granted, and his sentence is reversed for this purpose and the case remanded.").

The trial court, on remand, tried to ascertain further information as to whether the Appellant was competent on the day he originally entered the guilty pleas. In furtherance of this inquiry, the trial court sought to have the Appellant examined by a court-appointed psychiatrist who was to evaluate the Appellant as to his competency on the day the guilty pleas were originally entered in light of everything that had transpired. The Appellant refused to undergo further psychological evaluation. Thus, the trial court proceeded to hearing in order to resolve the additional inquiry mandated by this Court. The trial court, after making the necessary inquiry dictated in syllabus point six of Hatfield I, still found that the Appellant was competent. See Syl. Pt. 6, 186 W. Va. at 508, 413 S.E.2d at 163. Consequently, we conclude that the lower court followed this Court's directive on remand and did not deny the Appellant his due process rights in so doing.

Accordingly, based on the foregoing, the decision of the lower court is hereby affirmed.

Affirmed.