IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2002 Term

FILED
July 3, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 29758

RELEASED
July 3, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

CLAUDE RAY MORRIS,
Petitioner Below, Appellant

v.

HOWARD PAINTER, WARDEN,
Mount Olive Jail and Correctional Complex,
Respondent Below, Appellee

Appeal from the Circuit Court of Mingo County
Hon. Michael Thornsbury
Civil Action No. 98-C-181

REVERSED AND REMANDED

Submitted: May 22, 2002
Filed: July 3, 2002

Letitia Neese Chafin, Esq.
Law Office of H. Truman Chafin
Williamson, West Virginia
Attorney for Appellant

C. Jane Moran, Esq.
Williamson, West Virginia
Attorney for *Amicus Curiae*
Claude Ray Morris

Darrell V. McGraw, Jr.
Attorney General
Stephen J. Small
Senior Assistant Attorney General
Charleston, West Virginia
Attorney for Appellee

The Opinion of the Court was delivered PER CURIAM.

JUSTICE MAYNARD, deeming himself disqualified, did not participate in the decision of this case.

JUDGE IRENE C. BERGER, sitting by temporary assignment.

CHIEF JUSTICE DAVIS and JUDGE BERGER dissent and reserve the right to file a joint dissenting opinion.

JUSTICE ALBRIGHT concurs and reserves the right to file a concurring opinion.

SYLLABUS BY THE COURT

1. "Findings of fact made by a trial court in a post-conviction habeas corpus proceeding will not be set aside or reversed on appeal by this Court unless such findings are clearly wrong." Syllabus Point 1, *State ex rel. Postelwaite v. Bechtold*, 158 W.Va. 479, 212 S.E.2d 69 (1975).

2. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syllabus Point 1, *Chrystal R.M. v. Charlie A. L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

3. "'It is a fundamental guaranty of due process that a defendant cannot be tried or convicted for a crime while he or she is mentally incompetent.' *State v. Cheshire*, 170 W.Va. 217, 219, 292 S.E.2d 628, 630 (1982)." Syllabus Point 5, *State v. Hatfield*, 186 W.Va. 507, 413 S.E.2d 162 (1991).

Per Curiam:

This appeal was brought by Claude Ray Morris, appellant/petitioner below, from an order of the Circuit Court of Mingo County denying his request for habeas corpus relief.[1] In his petition for appeal, Mr. Morris assigned error to the circuit court's ruling that he was competent to stand trial.[2] After reviewing the record and listening to the arguments of the parties, we reverse the circuit court's denial of habeas relief.

I.

The record indicates that on September 19, 1991, Mr. Morris killed his brother and sister-in-law, maliciously wounded his niece, and assaulted his nephew. He was apprehended several days after the offenses were committed. After his arrest and indictment Mr. Morris was initially found incompetent to stand trial and was referred to a State mental institution. In 1993, and again on October 24, 1995, the trial court concluded that Mr. Morris was competent to stand trial. At the second competency hearing, October 24, 1995, there were conflicting evidentiary reports on Mr. Morris' competency. Nevertheless, the trial court determined that the petitioner was competent to stand trial, and on October 27, 1995, three days later, a jury found Mr. Morris guilty of first degree murder in causing the deaths of his

[1]An amicus brief was filed by Jane Moran, Esq. in support of Mr. Morris. Ms. Moran was co-counsel for Mr. Morris at his trial.

[2]Mr. Morris made several other assignments of error in his petition for appeal. However, we find those issues are without merit.

brother and sister-in-law. He was also found guilty of the malicious wounding of his niece and assault on his nephew. Mr. Morris was sentenced to life imprisonment without mercy.

On March 22, 1999, Mr. Morris filed a petition for a writ of habeas corpus in the circuit court, naming the Warden of the Mount Olive Jail and Correctional Complex as the respondent.[3] In his habeas corpus action, Mr. Morris, by counsel, argued before the circuit court that he was incompetent at the time of his trial, and that he was unable to assist his counsel in his defense at trial, as well as in the habeas corpus action. The circuit court again found that Mr. Morris was competent at the time of his trial and denied habeas relief. This appeal followed.

II.

Mr. Morris challenges the circuit court's denial of his petition for habeas relief. We have observed that "[w]hen considering whether such a petition requesting post-conviction habeas corpus relief has stated grounds warranting the issuance of the writ, courts typically are afforded broad discretion." *State ex rel. Valentine v. Watkins*, 208 W.Va. 26, 31, 537 S.E.2d 647, 652 (2000) (citations omitted). In Syllabus Point 1 of *State ex rel. Postelwaite v. Bechtold*, 158 W.Va. 479, 212 S.E.2d 69 (1975), we held that "[f]indings of fact made by a trial court in a post-conviction habeas corpus proceeding will not be set aside or reversed on appeal by this Court unless such findings are clearly wrong." However, "[w]here the issue on

[3]When the petition was filed the warden was George Trent. However, the present warden is Howard Painter.

an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syllabus Point 1, *Chrystal R.M. v. Charlie A. L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995). See *Stuckey v. Trent*, 202 W.Va. 498, 501, 505 S.E.2d 417, 420 (1998) (a circuit court's "rulings upon questions of law are reviewed *de novo*.") (citations omitted).

III.

This appeal presents the issue of whether Mr. Morris is entitled to habeas relief on the grounds that he was mentally incompetent at the time of his trial, and was consequently unable to assist in his own defense.[4] Our cases are clear in holding that "[i]t is a fundamental guaranty of due process that a defendant cannot be tried or convicted for a crime while he or she is mentally incompetent." Syllabus Point 5, in part, *State v. Hatfield*, 186 W.Va. 507, 413 S.E.2d 162 (1991). This Court has also made it clear that "[n]o person may be subjected to trial on a criminal charge when, by virtue of mental incapacity, the person is unable to consult

[4]It will be noted that for unexplained reasons Mr. Morris did not set out this assignment of error in his brief. This issue was, however, contained in Mr. Morris' petition for appeal. During oral arguments it was made clear to the parties that some members of the Court believed that the plain error rule allowed the issue to be considered on the merits, even though it was not raised in Mr. Morris' brief. *See* Syllabus Point 1, *State v. Myers*, 204 W.Va. 449, 513 S.E.2d 676 (1998) ("This Court's application of the plain error rule in a criminal prosecution is not dependent upon a defendant asking the Court to invoke the rule. We may, sua sponte, in the interest of justice, notice plain error."). The State was given an opportunity to have a continuance to brief the issue, but the State elected not to have the case continued.

with his attorney and to assist in the preparation of his defense with a reasonable degree of rational understanding of the nature and object of the proceedings against him." Syllabus Point 1, *State v. Milam*, 159 W.Va. 691, 226 S.E.2d 433 (1976).

The relevant facts of this case show that, shortly after Mr. Morris was arrested in September of 1991, he was initially found incompetent to stand trial, and transferred to a State mental facility. On March 3, 1993, the trial judge held a competency hearing as required, and ruled that Mr. Morris was competent to stand trial. However, the trial did not occur immediately after the finding of competency. It appears that the trial was delayed because Mr. Morris fell and broke his hip while in jail. Following hospitalization for his broken hip, Mr. Morris was returned to the county jail, but was shortly thereafter returned to the State mental institution.

In August of 1995, a psychiatrist for the State again provided a report indicating that Mr. Morris was competent to stand trial. Mr. Morris, through counsel, then requested an evaluation by independent psychiatrists, which the court permitted. Subsequently, on October 16, 1995, both Mr. Morris' psychiatrist and psychologist submitted reports to the court that indicated Mr. Morris was incompetent to stand trial. A principal finding made by Mr. Morris' experts was that he was not known to have spoken a word since his arrest in 1991.[5] Nevertheless, on October 24, 1995, the circuit court ruled that Mr. Morris was competent to stand trial. The trial began on October 25, 1995, and concluded on October 27, 1995.

[5]The record reflects that up to the time of this appeal, Mr. Morris is not known to have spoken since his arrest over ten years ago.

We are concerned with the procedure used by the trial court in finding Mr. Morris competent, and with the results of that procedure. As pointed out in the *amicus* brief, Mr. Morris' psychiatrist was not able to attend the competency hearing or the trial that was to immediately follow the competency hearing. The trial court refused to continue the competency hearing to allow for the psychiatrist's attendance at a competency hearing at a later date. Also, following the trial court's ruling on competency, the court also refused to continue the trial, but did, however, allow Mr. Morris' psychiatrist to testify at trial *via* telephone. While we do not have a *per se* objection to such a procedure at trial, we believe that under the circumstances of this case it was critical for Mr. Morris' psychiatrist to have been present at the competency hearing to fully explain to the trial court the basis of his determination that Mr. Morris was incompetent. At the time of the competency hearing Mr. Morris was receiving 150mg. of Thorazine, 20mg. of Prozac and 10mg. of Buspar daily. In addition, Mr. Morris had not spoken to anyone, including counsel, since his arrest in 1991. Clearly these factors militated against rushing the competency hearing, and favored a finding of incompetency.

We, therefore, believe that Mr. Morris' competency hearing was deficient. This Court has held that "a defendant need only demonstrate that he or she was denied an adequate procedure for determining mental competency after the trial court was presented with evidence sufficient to prompt good faith doubt regarding incompetency." *State v. Sanders*, 209 W.Va. 367, 377, 549 S.E.2d 40, 50 (2001) (citation omitted). Mr. Morris, through counsel, has made such a showing in this case. Moreover, our independent review of the record shows that the

preponderating evidence demonstrates Mr. Morris' incompetency at the time of trial, inasmuch as his persistent mental state resulted in his inability to communicate with his lawyers.

The procedure for addressing a defendant who has been found incompetent to stand trial is set forth in *W.Va. Code*, 27-6A-2(b)[1983].[6] In the event Mr. Morris is found to be incompetent for a second trial, our decision in *State v. Bias*, 177 W.Va. 302, 352 S.E.2d 52 (1986) outlines the possible course of action to be taken:

> A person who has been accused of a crime may not be committed involuntarily to a mental institution for an indefinite period of time solely for the purpose of determining and obtaining such person's competency to stand trial. Instead, after

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[6] *W.Va. Code*, 27-6A-2(b) [1983] provides:

> (b) At the termination of such hearing the court of record shall make a finding of fact upon a preponderance of the evidence as to the defendant's competency to stand trial based on whether or not the defendant is capable of participating substantially in his or her defense and understanding the nature and consequences of a criminal trial. If the defendant is found competent, the court of record shall forthwith proceed with the criminal proceedings. If the defendant is found incompetent to stand trial, the court of record shall upon the evidence make further findings as to whether or not there is a substantial likelihood that the defendant will attain competency within the next ensuing six months, and if the court of record so finds, the defendant may be committed to a mental health facility for an improvement period not to exceed six months. If requested by the chief medical officer of the mental health facility on the grounds that additional time is necessary for the defendant to attain competency, the court of record may, prior to the termination of the six-month period, extend the period for an additional three months. Within ten days of the termination of such period, the court of record shall ascertain by hearing in accordance with subsection (a) of this section whether or not the defendant has attained competency to stand trial.

> a reasonable period of time to determine the accused's competency to stand trial, and if incompetency is found, after a further reasonable period of time for the accused to attain such competency, the State, to satisfy equal protection and procedural due process requirements, must release the accused from *confinement* in the mental institution or commence civil commitment proceedings. In the civil commitment proceedings the State must show by clear, cogent and convincing evidence that the accused, like a person not accused of a crime, is likely to cause serious harm to himself or to others and should, therefore, be committed to a mental institution because of such propensity to do harm.

Bias, 177 W.Va. at 306, 352 S.E.2d at 56.

IV.

In view of the foregoing, we find that the circuit court was clearly wrong in finding that Mr. Morris was competent to stand trial on October 25, 1995. Consequently, Mr. Morris' convictions and sentences are vacated. This matter is remanded to the circuit court for further proceedings pursuant to *W.Va. Code*, 27-6A-2.

Reversed and Remanded.