No. 30649 - State of West Virginia v. Gary Wayne Kent

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, dissenting:

I would have affirmed the defendant's first-degree murder conviction and subsequent life-without-mercy sentence because I do not believe that the trial judge abused his discretion in denying the defendant a new trial on competency grounds.

This Court has explained:

> Because a trial court is able to observe the demeanor of the defendant and consequently has a better vantage point than this Court to make determinations regarding mental competency, we will disturb a lower court's ruling denying a psychiatric examination and related proceedings only where there has been an abuse of discretion.

State v. Sanders, 209 W.Va. 367, 379, 549 S.E.2d 40, 52 (2001) (citation omitted). In his order denying the defendant's motion for a new trial, the trial judge found:

> During the trial, the Court observed that the defendant's demeanor was normal and he exhibited no unusual behavior. The Court also observed no evidence of irrational behavior or any other indications whatsoever that the defendant was incompetent to stand trial. Further, the Court personally observed the defendant communicate with defense counsel on several occasions and he

> appeared to have a rational understanding of the proceedings against him. Throughout the course of the trial the Court was convinced that the defendant was competent to stand trial and no evidence or suggestions to the contrary were presented until after the defendant was convicted. In considering the circumstances retrospectively, the Court is still convinced that the defendant was competent to stand trial throughout the duration of his trial.

Further, said the trial judge,

> During the trial, the defendant's demeanor was not unusual or extraordinary and the Court observed no evidence of irrational behavior or any other indications whatsoever that the defendant was incompetent to stand trial. In fact, the Court personally observed the defendant communicate with defense counsel on several occasions and he appeared to have a rational understanding of the proceedings against him.
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> Apparently the Court was not alone in its belief that the defendant was competent to stand trial because no one, particularly defense counsel, informed the Court of any suspicions or conclusions that the defendant may be incompetent until after the defendant was convicted. . . . [I]t seems peculiar that, if the defendant was exhibiting signs of incompetency during the trial, defense counsel never noticed his incompetency until after the defendant had been convicted of first degree murder and received no recommendation of mercy. The Court is of the opinion that it would be a miscarriage of justice to grant the defendant a new trial on the basis that he was incompetent to stand trial during the trial when the defendant failed to inform defense counsel that he was not being provided his medication at the jail and when defense counsel waited until after the verdict is returned to inform

> the Court of their suspicions that the defendant was incompetent to stand trial.

The majority opinion contains a great deal of information about the defendant's mental health history. However, the trial judge had access to all of the defendant's previous psychiatric evaluations when he made his decision. Also, the majority opinion asserts that "[d]uring the trial, the appellant rarely spoke with his counsel[,]" Slip op. at 5, which is directly at odds with the trial judge's finding that "the Court personally observed the defendant communicate with defense counsel on several occasions[.]" Since the trial judge was actually at the defendant's trial, and the members of this Court were not, I will take the trial judge's word for it. Finally, the majority apparently accepts defense counsel's claims that the defendant behaved irrationally at trial. Defense counsel's word, however, quite frankly is incredible due to the fact that he never mentioned the defendant's irrational behavior until *after* the jury verdict.

The Supreme Court has established that a State may presume that the defendant is competent to stand trial and require him to prove his incompetence by a preponderance of the evidence. *Medina v. California*, 505 U.S. 437, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992). *See also Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996). The trial judge expressly found "that the defendant has failed to prove that, at the time of his trial, he was 'more likely than not' incompetent to stand trial." The trial judge's findings are

supported by Dr. Adamski's determination both pre- and post- trial that the defendant was competent to stand trial; the trial judge's own observations of the defendant during the trial; and the fact that defense counsel never alerted the trial judge during the trial of any suspicions that his client was incompetent. In light of this evidence, I fail to understand how the majority can find that the trial judge abused his discretion. Accordingly, I dissent.