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MEDINA v. CALIFORNIA 112 S.Ct. 2572 (1992)

Although the Court did not adopt a standard of strict scrutiny for forced administration of drugs, the state's burden to provide procedural protections to the defendant remains high. In cases where competency is a central issue, defense counsel should pursue all possible procedural avenues. One of the most important of these tools for defense counsel is requesting appointment of a mental health expert for indigent defendants through *Ake v. Oklahoma*,[15] and Virginia's mitigation expert statute.[16] Such an expert may be crucial in litigating whether there is a need for forced medication to achieve competency and in establishing the drug's potential adverse effects at trial, especially on the defendant's demeanor and thought process.[17]

An expert also may be particularly helpful in establishing a potential Eighth Amendment violation as a result of forced medication. Because of procedural default, the Court did not address Riggins' Eighth Amendment argument that administration of the drugs had affected his demeanor at trial and impaired his penalty phase defense. The argument, however, may have a great deal of merit. In Justice Kennedy's concurring opinion, he noted the great weight which a showing of remorse may carry with a jury at the sentencing phase of a capital case.[18] Clearly, the forced administration of anti-psychotic drugs may interfere with the defendant's ability to show remorse, an important mitigating factor. The Court implied that the Eighth Amendment issue in this context is an open question, and therefore it is an argument defense counsel should pursue. As with all federal constitutional arguments, defense counsel must be sure to continuously raise the objection to preserve this issue for appeal.

Defense attorneys in Virginia may find the decision in *Riggins* helpful in several respects. First of all, the Court confirms that a pretrial detainee generally retains a liberty interest to avoid the forced administration of drugs. Although the Court did not adopt a standard of strict scrutiny, the state still must make a substantial showing that invasion of the defendant's liberty interest is justified. Second, the opinion underscores the importance of skillful use of experts and investigators, who may aid in rebutting the state's claim that it has met the *Harper* prerequisites. Finally, nothing in the language of the opinion detracts from the potentially potent due process and Eighth Amendment arguments that forced administration of drugs impermissibly interferes with a defendant's rights to a fair trial and a fair capital penalty hearing. Although *Riggins* does not break new ground in the area of competency law or substantive due process, it does reaffirm that pretrial detainees and inmates retain a liberty interest, and leaves the door open for an extension of those rights.

Summary and Analysis by:
Paul M. O'Grady

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[15] 470 U.S. 68 (1985). To obtain a state appointed expert under *Ake*, defense counsel must show that insanity will be a major factor in the defense, that an expert is truly necessary, and that refusing to appoint an expert will deny defendant a fair trial.

[16] Va. Code Ann. § 19.2-264.3:1(A) (1990). Under Virginia's mental mitigation expert statute, an indigent capital defendant is automatically provided with a mental health expert if he is charged with or convicted of capital murder. The statute requires all state appointed mental health experts to submit a detailed written report to defense counsel on possible mitigating factors in the defendant's case. Va. Code Ann. §19.2-264.3:1(C) (1990). More generally, defense experts act as consultants for the defense and can aid greatly in building a theory of mitigation.

[17] *See generally* Konrad, *Getting the Most and Giving the Least from Virginia's "Mental Health Mitigation" Statute*, Capital Defense Digest, Vol. 3, No. 2, p. 22 (1991); and Murtaugh, *Mitigation: The Use of a Mental Health Expert in Capital Trials*, Capital Defense Digest, Vol. 1, No. 2, p. 16 (1989).

[18] *Riggins*, 112 S.Ct. at 1819-1820 (Kennedy, J., concurring) (citing Geimer & Amsterdam, *Why Jurors Vote Life or Death: Operative Factors in Ten Florida Death Penalty Cases*, 15 Am.J.Crim.L 1, 51-53 (1987-1988)).

MEDINA v. CALIFORNIA

112 S.Ct. 2572 (1992)
United States Supreme Court

FACTS

In 1984 Teofila Medina, Jr. stole a gun from a Santa Ana pawn shop and in the following weeks held up two gas stations, a drive-in dairy, and a market. He killed three employees of these businesses, attempted to rob a fourth employee, and shot at two passersby who attempted to follow him. Medina was arrested a few weeks after he stole the gun and was charged with a number of offenses, including three counts of first degree murder.

Before his trial, Medina's counsel moved for a hearing to determine if Medina was competent to stand trial.[1] Under California state law, "[a] person cannot be tried or adjudged to punishment while such person is mentally incompetent."[2] A defendant is mentally incompetent "if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner."[3] Under the California statute, there is a presumption that the defendant is competent, and the burden of proving that the defendant is incompetent by a preponderance of the evidence falls to the party claiming incompetence.[4]

The court granted Medina's motion, and the competency issue was tried before a jury. The hearing lasted six days and included conflicting testimony from a number of experts.[5] One psychiatrist, who had known Medina while he was a prisoner in Arizona, testified that the defendant was a paranoid schizophrenic and was incompetent to assist his counsel at trial. A clinical psychologist doubted the diagnosis of schizophrenia but expressed no opinion on competency. A different psychiatrist also doubted the schizophrenia diagnosis but leaned toward competency. Another psychologist found Medina schizophrenic but competent. A jail psychiatrist found that Medina suffered from depression, but that he was competent and may have been malingering. A physician who treated Medina could give no opinion as to competence. On a number of occasions during the hearing, Medina made both verbal and physical

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[1] Medina's hearing was conducted pursuant to Cal. Penal Code Ann. § 1368 (West 1982).

[2] Cal. Penal Code Ann. § 1367 (West 1982).

[3] *Id.*

[4] Cal. Penal Code Ann. § 1369 (West 1982).

[5] The opinion does not reveal whether the experts testified on behalf of the defendant or the State.

outbursts, including overturning the counsel table.

In accordance with California law, the jury was instructed that "the defendant is presumed to be mentally competent and he has the burden of proving by a preponderance of the evidence that he is mentally incompetent as a result of mental disorder or developmental disability." The jury found Medina competent to stand trial. At the guilt phase of his trial, a new jury was impanelled and Medina pled not guilty and not guilty by reason of insanity. The jury found Medina guilty of three counts of first degree murder and a number of lesser offenses. During the penalty phase of trial, the jury returned a verdict of death and the trial court imposed the death sentence.

On state appeal, Medina argued that Section 1369 of the California Penal Code violated his Fourteenth Amendment right to Due Process in two ways: (1) by placing the burden of proof on a defendant to establish that he was incompetent to stand trial; and (2) by establishing a presumption that a defendant is competent to stand trial unless proven otherwise by a preponderance of the evidence. The California Supreme Court denied Medina's appeal,[6] relying chiefly on the United States Supreme Court's decision in *Leland v. Oregon*.[7] The *Leland* decision affirmed a state statute requiring a defendant to prove the defense of insanity beyond a reasonable doubt.[8]

HOLDING

The United State Supreme Court affirmed the California Supreme Court's judgment, holding that the Due Process Clause does not prohibit a state from requiring a defendant who claims incompetence to bear the burden of proving so by a preponderance of the evidence.[9] In addition, the Court held that a statutory presumption of competency does not violate a defendant's procedural due process rights.[10]

ANALYSIS/APPLICATION IN VIRGINIA

The Court rejected Medina's argument that the *Mathews v. Eldridge*[11] balancing test for procedural due process claims was proper in this case.[12] Noting that the *Mathews* test was developed to address challenged administrative procedures, the Court distinguished a state's procedural rules that are part of the criminal process from procedures arising in the context of administrative or civil law. Pointing out that it had applied the *Mathews* test in a criminal context only twice,[13] the Court stated that it was "not at all clear" that the test was essential to the outcome of those cases.[14]

The Court adopted as the correct approach the test applied in *Patterson v. New York*,[15] which was decided after *Mathews*.[16] The *Patterson* test gives deference to state legislatures in matters of criminal procedure. Unless the procedure "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,"[17] it will be upheld. According to the Court, placing the burden of proving incompetency upon a defendant does not offend a deeply rooted principle of justice.[18] The Court found no historical basis for holding that due process is violated by this burden.[19] The Court also found that the rule is not fundamentally unfair in its operation.[20] Once the state provides a defendant with procedures to evaluate competency, due process is satisfied.[21]

Medina also argued that placing the burden of proving incompetency upon a defendant is inconsistent with *Pate v. Robinson*.[22] *Pate* held that "a defendant whose competence is in doubt cannot be deemed to have waived his right to a competency hearing."[23] The Court distinguished *Pate* as applying **prior** to a competency hearing, while the rule of *Medina* applies **during** the hearing itself.[24] During the hearing, a defendant has the assistance of counsel in proving incompetency, and expert testimony may be offered. The Court pointed out that a defendant's inability to assist his counsel may, in itself, be used as probative evidence of incompetence.[25] The Court also concluded that defense counsel may very well have the "best-informed" view of defendant's ability to participate in his defense.[26]

As to the California statute's presumption that a defendant is competent, the Court held that the presumption essentially restates the burden of proof. Therefore, the statutory presumption of competency does not violate due process.[27]

Virginia Code Section 19.2-169.1 sets forth the statutory procedures for determining competency to stand trial in Virginia. Once the Commonwealth or the defense raises the issue of competence, the court must order a competency evaluation to be performed by at least one qualified mental health expert.[28] The Commonwealth and defense are required to provide any information relevant to the examination to the expert.[29] Once the examination is completed, the expert must submit a written report to the court and the attorneys for the Commonwealth and defense.[30] After

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6 *People v. Medina*, 799 P.2d 1282 (Cal. 1990).

7 343 U.S. 790 (1952).

8 *Id.*

9 *Medina v. California*, 112 S.Ct. 2572, 2579 (1992).

10 *Id.* at 2581.

11 424 U.S. 319 (1976). The *Mathews* test requires a court to consider three factors in evaluating procedural due process: (1) the interest affected; (2) the risk of erroneous deprivation of the interest through the existing procedure, and the probable value, if any, of additional or different procedural safeguards; and (3) the government's interest, including the function involved and the additional costs and/or administrative burdens imposed by additional or different procedures.

12 In her concurring opinion, Justice O'Connor concluded that the balancing test of *Mathews* was appropriate in the criminal context. After applying the balancing test, however, Justice O'Connor found that the California statute still satisfied due process. *Medina*, 112 S.Ct. at 2582 (O'Connor, J., concurring).

13 *See United States v. Raddatz*, 447 U.S. 667 (1980) (rejecting a due process challenge to the authority of federal magistrates to act in suppression hearings); *Ake v. Oklahoma*, 470 U.S. 68 (1985) (holding that due process requires that an indigent capital defendant be provided with access to psychiatric assistance).

14 *Medina*, 112 S.Ct. at 2577.

15 432 U.S. 197 (1977).

16 *Medina*, 112 S.Ct. at 2577.

17 *Id.* (quoting *Patterson*, 432 U.S. at 202) (internal quotations omitted).

18 *Id.*

19 *Id.* at 2577-2578.

20 *Id.* at 2578-2579.

21 *Id.* at 2579.

22 383 U.S. 375 (1966).

23 *Medina*, 112 S.Ct. at 2579 (citing *Pate*, 383 U.S. at 384).

24 *Id.* at 2580.

25 *Id.*

26 *Id.* The dissenting opinion questioned this conclusion by pointing out that it is not likely that defense counsel will testify to these points at a competency hearing and that defense counsel is actually afforded little opportunity for contact with a client who is incarcerated pending trial. Therefore, the dissent argued, the state is in a much better position to observe the defendant and should consequently be required to prove competency. *Id.* at 2587-2588 (Blackmun, J., dissenting).

27 *Id.* at 2581.

28 Va. Code Ann. § 19.2-169.1A (1990).

29 Va. Code Ann. § 19.2-169.1C (1990).

30 Va. Code Ann. § 19.2-169.1D (1990).

receiving this report, the court determines if the defendant is competent to stand trial.[31] A hearing on the issue is not required unless requested by one of the parties.[32] As with the California statute in *Medina*, at a Virginia competency hearing, the party raising the issue of incompetency must prove it by a preponderance of the evidence.[33] As a practical matter, in almost all cases this will be the defendant. Further, while there is no statutory presumption of sanity under Section 19-2.169.1, *Payne v. Slayton*[34] and *Graham v. Gathright*[35] established that a defendant is presumed to be sane at trial.

Although the Virginia statute only requires that one expert be ordered to evaluate the defendant's competency, there appears to be no exclusion to a defendant being examined by an expert of his own choice. If a hearing is held, the defendant has the right to introduce evidence and, presumably, this evidence could include expert testimony of the defendant's choice. The statute is silent, however, on what happens when an indigent defendant is unable to pay for expert assistance of his or her choosing.

In *Ake v. Oklahoma*[36], the United States Supreme Court held that where a defendant's mental condition will be a significant factor at trial, the state is required to provide an indigent defendant with psychiatric assistance. Therefore, in a Virginia competency proceeding, if an indigent defendant desires to be examined and assisted by a psychiatric expert, defense counsel should argue that *Ake* requires the Commonwealth to provide this assistance. Particularly in light of the *Medina* decision, a compelling argument can be made that if a defendant must bear the burden of proving incompetency, due process requires that the means for bearing that burden must be made available.

Summary and analysis by:
Susan F. Henderson

31 Va. Code Ann. § 19.2-169.1E (1990).
32 *Id.*
33 *Id.*
34 329 F.Supp. 886 (W.D.Va. 1971).
35 345 F.Supp. 1148 (W.D.Va. 1972).
36 470 U.S. 68 (1985).

STRINGER v. BLACK

112 S.Ct. 1130 (1992)

SOCHOR v. FLORIDA

112 S.Ct. 2114 (1992)

ESPINOSA v. FLORIDA

112 S.Ct. 2926 (1992)

United States Supreme Court

During the 1992 term, the United States Supreme Court decided three cases with potentially broad application to Virginia law, particularly with respect to Virginia's "vileness" aggravating factor.[1] This summary will first examine each case individually and then attempt to draw some broader implications from the Court's rulings in all three cases.

CONSTITUTIONAL BACKGROUND: THE SPECIFICITY REQUIREMENT OF THE EIGHTH AMENDMENT

When the United States Supreme Court held that the death penalty was not a *per se* violation of the Eighth Amendment's proscription of cruel and unusual punishment, it placed a duty on states that allow capital punishment to establish a "meaningful method for differentiating between the few cases where [the death penalty] is imposed from the many cases in which it is not."[2] In *Godfrey v. Georgia*[3] the Supreme Court found that the application of the Georgia "vileness" factor failed to meet the obligation enunciated in *Furman* because "nothing in [the factor's] few words, standing alone, . . . implie[d] any inherent restraint on the arbitrary and capricious infliction of the death sentence." The statute in *Godfrey* allowed imposition of the death penalty under the exact same terms as the Virginia statute, where the offense was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or aggravated battery to the victim."[4] The Court found this language to be unconstitutionally vague, in violation of the Eighth Amendment.

The Court revisited the issue in *Maynard v. Cartwright*.[5] Okla-

1 Virginia law permits imposition of the death penalty for capital murder only where at least one of two statutory aggravating circumstances exists. The second such factor is that "the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim." Va. Code Ann. § 19.2-264.4(C) (1990). *See also* Va. Code Ann. § 19.2-264.2 (1990).

2 *Furman v. Georgia*, 408 U.S. 238, 313 (1972) (White, J., concurring) (*quoted in Gregg v. Georgia*, 428 U.S. 153, 188 (1976) (opinion of Stewart, Powell, and Stevens, JJ.)).

3 446 U.S. 420, 428 (1980) (opinion of Stewart, J., joined by Blackmun, Powell, and Stevens, JJ.).

4 Ga. Code § 27-2534.1(b)(7) (1978).

5 486 U.S. 356 (1988) (requiring a narrowing construction of Oklahoma "vileness" factor). *See* case summary of *Maynard*, Capital Defense Digest, Vol. 1, No. 1, p. 15 (1988).