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## GODINEZ v. MORAN 113 S. Ct. 2680 (1993)

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## GODINEZ v. MORAN

113 S. Ct. 2680 (1993)  
United States Supreme Court

## FACTS

In the early morning of August 2, 1984, during the course of a robbery, defendant Richard Allan Moran shot and killed a bartender and a patron of a Carson City, Nevada tavern. Nine days later, he killed his former wife in her apartment by shooting her five times, and then attempted suicide unsuccessfully. Moran confessed to the killings from his hospital bed on August 13. After Moran pleaded not guilty to three counts of capital murder, the trial court ordered a psychiatric evaluation of the defendant to determine whether he was competent to stand trial. While the examining physicians determined that Moran suffered from deep depression, both concluded that he was competent.

In November 1984, not wishing to mount a defense or put forth any mitigating evidence, Moran appeared in court seeking to dismiss the public defender assigned to his case, and to change his pleas to guilty. In an attempt to assure that the defendant could validly waive his right to counsel, the judge inquired into whether the defendant was under the influence of drugs or alcohol. Although Moran replied that he was currently on medication,<sup>1</sup> the trial judge made no further inquiry with regard to his mental state.

After asking the defendant a series of questions in an attempt to make sure that Moran understood his legal rights, the judge determined that he was competent to stand trial and that he had voluntarily waived his right to counsel. After the trial judge accepted Moran's guilty pleas, Moran was sentenced to death by a three judge panel<sup>2</sup> for each of the murders. The Nevada Supreme Court affirmed the decision of the sentencing panel with respect to the murders of the bartender and the patron, but reversed his death sentence for the murder of his wife.<sup>3</sup>

On July 30, 1987, the defendant filed a state habeas petition arguing that he had been mentally incompetent to represent himself. The trial court, the Nevada Supreme Court,<sup>4</sup> and the U.S. Supreme Court<sup>5</sup> denied relief. Defendant then filed a federal habeas petition which was denied by the District Court. The Ninth Circuit reversed, however, holding that due process required the court to hold a hearing evaluating Moran's competency at the time he sought to dismiss counsel and change his plea, because "[c]ompetency to waive constitutional rights requires a higher level of mental functioning than that required to stand trial."<sup>6</sup> The Ninth Circuit noted that while a defendant need only have a "rational and factual understanding" of his surroundings in order to stand trial, he must be able to make "reasoned choice[s]" in order to waive counsel, and therefore a different standard of competency should apply in Moran's case than was applied by the trial judge.<sup>7</sup>

## HOLDING

Resolving a conflict among the circuit courts, the United States Supreme Court reversed the Ninth Circuit, holding that there is no distinction between the standard of competency to stand trial and the standard of competency for pleading guilty or waiving the right to counsel.<sup>8</sup> The Court explained that the Ninth Circuit had misconstrued its opinion in *Westbrook v. Arizona*,<sup>9</sup> and held that while states may choose to adopt a higher standard of competency for defendants wishing to plead guilty or waive the right to counsel, the Due Process Clause does not require states to do so.<sup>10</sup>

## ANALYSIS/APPLICATION IN VIRGINIA

The holding in *Moran* demonstrates that occasionally a defendant may obtain more relief from an appellate court than he sought, and such a result may ultimately prove detrimental. Before the Ninth Circuit, Moran had argued that the trial court should have held an additional hearing on competency in light of evidence, arising between the time of the competency evaluation and the hearing when Moran discharged counsel and pleaded guilty, that he was profoundly depressed and under the influence of a number of prescription drugs at the time he decided to waive counsel and plead guilty.<sup>11</sup> Defense counsel relied on the Court's holding in *Westbrook v. Arizona*.<sup>12</sup> In *Westbrook*, the Supreme Court vacated the lower court judgment because although the trial court had determined that the defendant was competent to stand trial, the court had failed to inquire into competency to waive counsel. Applying *Westbrook*, defense counsel argued that because the Court deemed competency to stand trial and competency to waive counsel as different, a separate competency hearing beyond the initial competency-to-stand-trial determination should have been made in Moran's case. The Ninth Circuit arguably went further, holding that the clear implication of *Westbrook* is that due process requires a higher standard of competency to waive a constitutional right than the competency standard required simply to stand trial. Although Moran persuaded the Ninth Circuit, he was unable to convince the United States Supreme Court that it should promulgate a new constitutional rule based on the two paragraph *per curiam* opinion in *Westbrook*.

The decision of the Ninth Circuit compelled the Supreme Court to recast the issue in such a way that the defendant's substantive arguments were distorted. The majority failed even to mention the fact that Moran was under the influence of drugs at the time of his hearing. Perhaps, if

<sup>1</sup> At the time, Moran was simultaneously taking four different prescription drugs: phenobarbital, dilantin, inderal, and vistaril. The various side effects which these drugs have been known to cause include: confusion, light-headedness, mental depression, hallucinations, disorientation, short-term memory loss, drowsiness, tremors, and convulsions. *Godinez v. Moran*, 113 S. Ct. 2680, 2692-93 & n.1 (Blackmun, J., dissenting).

<sup>2</sup> Nev. Rev. Stat. §175.558 (1991).

<sup>3</sup> *Moran v. State*, 734 P.2d 712 (Nev. 1987).

<sup>4</sup> *Moran v. Warden*, 810 P.2d 335 (Nev. 1989).

<sup>5</sup> *Moran v. Warden*, 493 U.S. 874 (1989).

<sup>6</sup> *Moran v. Godinez*, 972 F.2d 263, 266 (9th Cir. 1992).

<sup>7</sup> *Id.* at 266-67.

<sup>8</sup> *Godinez v. Moran*, 113 S. Ct. 2680, 2686 (1993).

<sup>9</sup> 384 U.S. 150 (1966) (per curiam).

<sup>10</sup> *Moran*, 113 S. Ct. at 2688.

<sup>11</sup> The defendant did not argue that a higher standard should apply at the hearing, but rather maintained throughout the appellate process that "[d]ue process does not require a higher standard, it requires a separate inquiry."

<sup>12</sup> 384 U.S. 150 (1966)(per curiam).

the Ninth Circuit had held that the trial court made an insufficient inquiry into the defendant's mental state at the time of his waiver, the Supreme Court would not have felt compelled to treat the issue as a question of whether a different and higher standard is applicable for pleas of guilty and waiving counsel compared with competency to stand trial.

On the primary issue as the Court framed it, the major point of contention between the majority and the dissenters centered around the difference between, on one hand, **competency to make decisions**, such as waiving counsel and pleading guilty, and on the other hand, **competence or ability to perform certain acts**, such as ability to assist in the defense or to proceed without assistance of counsel. The position of the majority was that a defendant who was found competent to make the decision to waive counsel is necessarily competent to proceed without counsel, and therefore a higher standard of competence was unnecessary. Although a defendant most likely will be better represented by counsel, his **ability to represent himself** "has no bearing upon his **competence to choose self-representation.**"<sup>13</sup>

The dissent believed that competence to act does not necessarily flow from competence to choose, and therefore a separate competency inquiry was called for in Moran's case.<sup>14</sup> The majority, by contrast, believed that any heightened scrutiny in a case such as this should focus on whether his waiver of rights was knowing and voluntary, and not on the competency to act.

The key to deciphering the *Moran* decision is to understand the different perspectives of the Ninth Circuit and the Supreme Court, and perhaps arrive at a middle ground. At the center of an evaluation of a defendant's competency to stand trial is her capacity to understand and appreciate the proceeding against her, and to participate in those proceedings. The decisions to discharge counsel and to plead guilty, by contrast, require the defendant to actually exercise the capacity referred to in the competency-to-stand-trial hearing by waiving a number of constitutional rights.

It is possible, and not uncommon, that a competent defendant may knowingly exercise that competence and intelligently waive counsel and plead guilty. Basic competence, however, remains a necessary predicate to knowing and intelligent waiver, and a separate inquiry should be conducted if the continuing validity of an earlier competency determination is called into question by interim events. In Moran's case, due to the administration of a combination of highly potent prescription drugs, his mental functions were substantially impacted, and a reevaluation of his competence should have been conducted by the trial judge. This additional evaluation, and not a higher substantive standard, was all defendant argued that due process required.

It is the change in Moran's capacity which occurred in the interim period which was the key to his defense, but which was distorted by the debate between the Supreme Court and the Ninth Circuit. The Ninth Circuit held that the different considerations involved in the evaluation of a defendant's ability to waive rights required a quantitatively higher standard for competency. The Supreme Court rejected this assertion finding that a different standard was not necessary, because defendants' rights are protected by the "knowing and voluntary" inquiry. Neither court grasped that the heart of Moran's case was not that he deserved a different type of competency hearing based on a higher standard, but

simply that he deserved a new hearing based on his changed circumstances during the interim period.

Ultimately, as long as defense counsel clearly distinguishes the issues of competency and waiver, the holding in *Moran* is of little significance to the Virginia defense bar. The case does outline the two pronged constitutional inquiry which will be made in competency cases, however. A reviewing court will first consider the issue of competency. A fundamental principle of due process is that an incompetent defendant may not stand trial.<sup>15</sup> In *Dusky v. United States*,<sup>16</sup> the Supreme Court held that the standard for competence to stand trial was "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding — and whether he has a rational as well as factual understanding of the proceedings against him."<sup>17</sup>

Although the Supreme Court has never explicitly named a standard for competence to waive constitutional rights, other courts have settled on the *Dusky* standard as the appropriate standard in that context as well.<sup>18</sup> The *Moran* decision arose out of a split in the circuits, led primarily by the Ninth Circuit, that a guilty plea required a higher standard of competence than the standard for standing trial.<sup>19</sup> *Moran* has settled this controversy in favor of a single standard of competency.

Competency standards in Virginia are dictated by statute. Virginia Code section 19.2-169.1 requires that the court order a competency evaluation if there is probable cause that the defendant "lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense . . ." <sup>20</sup> The first duty of capital defense counsel in a case where competency may be an issue is to move for a competency hearing under Virginia Code section 19.2-169.1. Should defendant be found competent to stand trial, counsel should then pursue psychiatric evaluation of the defendant for the purpose of mitigating evidence at the penalty stage, if necessary. Expert psychiatric testimony during the trial phase of a capital trial may or may not be helpful, and the value of such testimony must be weighed on a case-by-case basis.

Virginia habeas practitioners should be aware that the trial judge has an independent duty, when the issue is suggested by the circumstances or by the evidence, to make the competency determination whether or not defense counsel moves for such a determination. Therefore, the defense of incompetency cannot be waived by the defendant or defaulted by her counsel's failure to move for a competency determination.<sup>21</sup>

Once the court has established competence, in cases where the defendant pleads guilty, it will inquire into whether the defendant's decision to waive her constitutional rights was knowing and voluntary. According to the Supreme Court's holding in *Johnson v. Zerbst*,<sup>22</sup> waiver of constitutional rights must be "intelligent and competent." Furthermore, the Court held in *Boykin v. Alabama*,<sup>23</sup> that the waiver of rights (1) against self-incrimination, (2) to trial by jury, and (3) to confront one's accusers, must be affirmatively on the record. Under *Boykin*, a trial judge may not accept a guilty plea "without an affirmative showing that it was intelligent and voluntary" **on the record.**<sup>24</sup> While the decision on competency rests ultimately with the court, the trial judge will most likely receive expert assistance as well as input from defense counsel and the Commonwealth's attorney. By contrast, whether or not the defendant's rights under *Boykin* are protected depends almost en-

<sup>13</sup> *Moran*, 113 S. Ct. at 2687 (emphasis in original).

<sup>14</sup> *Id.* at 2694 (Blackmun, J., dissenting).

<sup>15</sup> See *Medina v. California*, 112 S. Ct. 2572 (1992), and case summary of *Medina*, Capital Defense Digest, Vol. 5, No. 1, p. 9 (1992); *Pate v. Robinson*, 383 U.S. 375 (1966); *Bishop v. United States*, 350 U.S. 961 (1956). See also Va. Code Ann. §19.2-167 (1990).

<sup>16</sup> 362 U.S. 402 (1960) (per curiam).

<sup>17</sup> *Id.* See also *Drope v. Missouri*, 420 U.S. 162 (1975).

<sup>18</sup> See, e.g., *Shaw v. Martin*, 733 F.2d 304, 314 (4th Cir.), cert. denied, 469 U.S. 873 (1984).

<sup>19</sup> See *Sieling v. Eymann*, 478 F.2d 211 (9th Cir. 1973).

<sup>20</sup> Va. Code Ann. § 19.2-169.1(A) (1990).

<sup>21</sup> *Kibert v. Peyton*, 383 F.2d 566 (4th Cir. 1967).

<sup>22</sup> 304 U.S. 458 (1938).

<sup>23</sup> 395 U.S. 238 (1969).

<sup>24</sup> *Id.* at 242.

tirely on how the trial judge conducts the determination of whether the defendant's waiver is valid. In Moran's case, a more thorough examination most probably would have uncovered the extenuating circumstances surrounding Moran's guilty plea and waiver of counsel.

Virginia rule of criminal procedure 3A:8, which essentially mirrors Federal Rule of Criminal Procedure 11, codifies the *Boykin* requirements.<sup>25</sup> Form 6, included in the Virginia rules, ensures that a thorough record of the defendant's state of mind at the time of the guilty plea is on the record. That form includes twenty-four detailed (suggested) questions to be asked by the judge to an accused who pleads guilty. Assuming that the defendant is alert and fully understands the judge's inquiries, the form questions should protect the defendant's rights under *Boykin*.<sup>26</sup>

Defense counsel representing an individual like Moran, impaired by drugs or by mental illness, have special responsibilities. The Model Code of Professional Responsibility states: "Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer . . ."<sup>27</sup> Counsel in such a criminal case assumes the role of a

quasi-guardian as well as an advocate.<sup>28</sup> Although the client may be incapacitated, an attorney still has a responsibility to consider his wishes. As the comment to Model Rule 1.14 states: "[A] client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. . ."<sup>29</sup> While counsel must take into consideration the wishes of his partially incapacitated client, he must not stray from his ultimate duty to act in the best interests of his client.

Finally, one of the most important lessons anyone acquainted with *Moran* must take away with them is the importance of discouraging pleas of guilty to capital murder unless a sentence other than death is assured.<sup>30</sup> The appellate process as it now stands often will make such decisions irrevocable. *Moran* is a clear example of how the true contentions of a defendant may be distorted in the appellate process. A defendant like Moran who emerges from a drug induced haze, may not be given the opportunity to withdraw his plea.

Summary and analysis by:  
Paul M. O'Grady

<sup>25</sup> "A circuit court shall not accept a plea of guilty or nolo contendere without first determining that the plea is made voluntarily with the understanding of the nature of the charge and the consequences of the plea." Virginia rule of criminal procedure 3A:8(b).

<sup>26</sup> The Supreme Court of Virginia held a defendant's guilty plea under *Boykin* invalid in *Gardner v. Warden of the Virginia State Penitentiary*, 222 Va. 491, 281 S.E.2d 876 (1981). In that case, defendant agreed to plead guilty to murder in return for a sentence of thirty years imprisonment and a five year suspended sentence. He was told to respond negatively should the judge ask if his plea was based on a deal with the Commonwealth's attorney. Not having been previously consulted, the trial judge accepted the guilty plea and sentenced defendant to sixty years with ten years suspended. The supreme court reversed the trial court holding that it was clear that under the circumstances that the guilty plea by the defendant had not been entered into intelligently and knowingly, and that the defendant should have had an opportunity to

withdraw his guilty plea. *Id.* at 495, 281 S.E.2d at 878.

For other Virginia decisions applying *Boykin*, see, e.g., *Burton v. Peyton*, 210 Va. 484, 489, 171 S.E.2d 822, 826 (1970)(upholding validity of guilty plea based on *Boykin*); *Miracle v. Peyton*, 211 Va. 123, 126, 176 S.E.2d 339, 340 (1970)(same); *Anderson v. Warden*, 222 Va. 511, 515, 281 S.E.2d 885, 888 (1981)(noting *inter alia* that the "purpose of the [*Boykin*] examination on the record is to forestall 'the spin-off of collateral proceedings' . . ." (quoting *Boykin*, 395 U.S. at 244)).

<sup>27</sup> Model Code of Professional Responsibility E.C. 7-12.

<sup>28</sup> See Henderson, *Presenting Mitigation Against the Client's Wishes: A Moral or Professional Imperative?*, Capital Defense Digest, this issue.

<sup>29</sup> Model Rules of Professional Conduct Rule 1.14, cmt. 1.

<sup>30</sup> See *Commonwealth v. Dubois*, 435 S.E. 2d 636 (Va. 1993), and case summary of *Dubois*, Capital Defense Digest, this issue.

## JOHNSON v. TEXAS

113 S. Ct. 2658 (1993)  
United States Supreme Court

### FACTS

On March 23, 1986, nineteen year-old Dorsie Lee Johnson and a friend, Amanda Miles, robbed a convenience store in Snyder, Texas. Johnson shot and killed the clerk, Jack Huddleston. A few weeks after the crime, Johnson was arrested for a subsequent robbery and attempted murder of a store clerk in Colorado City, Texas. At that time, Johnson confessed to Jack Huddleston's murder and the robbery in Snyder. The homicide qualified as a capital offense under Texas law because Johnson intentionally or knowingly caused the clerk's death and the murder occurred in the commission of a robbery.<sup>1</sup>

During the penalty phase of the bifurcated trial, the State presented a variety of evidence to establish future dangerousness, covering a time period from an incident in the third grade when Johnson stabbed a classmate with a pencil, to six days after Huddleston's murder when Johnson fired two shots at a man outside a Snyder restaurant, and culminating with testimony from a sheriff's deputy in a jail where Johnson was being held, stating that Johnson had threatened to "get" the deputy when he was released. In contrast, the sole witness in mitigation for the defense was Johnson's father, who testified that an eighteen or nineteen year-old does not fully evaluate his conduct in the same way as an older person. Johnson was sentenced to death.<sup>2</sup> The Texas Court of Criminal Appeals affirmed.<sup>3</sup>

of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result; (2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and (3) if raised by the

<sup>1</sup> Tex. Penal Code Ann. §§19.02(a)(1), 19.03(a)(2) (Vernon 1989). See case summary of *Graham v. Collins*, Capital Defense Digest, Vol. 5, No. 2, p. 8 (1993). Cf. Va. Code Ann. §18.2-31(4).

<sup>2</sup> At the time of Johnson's trial, the Texas capital-sentencing statute contained two "special issues" for the jury to consider:

(1) whether the conduct of the defendant that caused the death