GODINEZ v. MORAN 113 S. Ct. 2680 (1993)
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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, 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 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 former wife in her apartment.

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, and the U.S. Supreme Court 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.” 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.

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. The Court explained that the Ninth Circuit had misconstrued its opinion in Westbrook v. Arizona, 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.

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. Defense counsel relied on the Court’s holding in Westbrook v. Arizona. 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

1 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).
6 Moran v. Godinez, 972 F.2d 263, 266 (9th Cir. 1992).
7 Id. at 266-67.
10 Moran, 113 S. Ct. at 2688.
11 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.”
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." 13

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. 14 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 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. 15 In Dusky v. United States, 16 the Supreme Court held that the standard for competency 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.” 17

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. 18 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. 19 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 . . . ” 20 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. 21

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, 22 waiver of constitutional rights must be “intelligent and competent.” Furthermore, the Court held in Boykin v. Alabama, 23 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. 24 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-
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 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 the consequences of his actions and that the defendant should have had an opportunity to withdraw his guilty plea. Id. at 495, 281 S.E.2d at 878.


Summary and analysis by: Paul M. O’Grady

JOHNSON v. TEXAS

113 S. Ct. 2658 (1993)

United States Supreme Court

FACTS

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. The Texas Court of Criminal Appeals affirmed.