

IN THE CIRCUIT COURT
OF WAYNE COUNTY
WEST VIRGINIA;

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WAYNE COUNTY, WV
BY YMR

STEPHEN WESTLEY HATFIELD,
Prisoner No. 16456,
Petitioner,

v.

Civil Action No. 00-C-204
Special Judge Jay M. Hoke

HOWARD PAINTER, Warden of
Mount Olive Correctional Complex,
Respondent.

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CIVIL ORDER
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SUPPLEMENTAL ORDER:
GRANTING MOTION FOR SUMMARY JUDGMENT

Procedural Posture

On a previous day hereto, namely January 31, 2005, this Court issued an order granting summary judgment in favor of the Petitioner, as the record to this matter will reflect. There were, however, certain omissions from that Order, particularly in the form of certain findings and conclusions, that the Court wished to supplement said Order with in the interests of justice. Since that time, moreover, our Supreme Court has issued further decisions that have a substantial impact on this Court's original ruling, and therefore should be included in this decision as well. As a result of which, the Court has determined that it is just and proper, as well as reasonable and necessary, to issue this Supplemental Order granting the relief set out herein.

The Court has received and considered the written Rule 56(c)

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Motion for Summary Judgment filed on behalf of Petitioner, Mr. Hatfield, in accordance with the applicable provisions of West Virginia Rules of Civil Procedure, and in light of the provisions of West Virginia Code §53-4A-1, et seq. and the Rules Governing Post Conviction Habeas Corpus Proceedings in West Virginia, together with Defendant's Memorandum of Law in Support of Defendant's Motion for Summary Judgment, as well as all of the arguments in favor of said Motion and in opposition to said Motion.

DISCUSSION OF FACTS AND LAW

In regard to any Motion for Summary Judgment filed in such a case as the present one, the standard for granting or denying such relief is set forth in the express language of Rule 56(c) of the West Virginia Rules of Civil Procedure. In interpreting the test set forth in Rule 56(c), the Supreme Court has ruled: The test for whether a motion for summary judgment should be granted is essentially the same as the "rather restrictive standard" applied when ruling on motions for judgment on the pleadings. A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. Gunn v. Hope Gas, Inc., 402 S.E.2d 505 (W. Va. 1991). (underscoring supplied)

In analyzing any action for habeas corpus relief which contains different causes of action, there may be a multitude of issues raised, as the Losh list (i. e. check list) well

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exemplifies. In this matter, however, there is really only one issue, whether the Petitioner was at the time of the original trial, or even presently, competent to stand trial, as the standards for such are established by statute and by the holdings of our Supreme Court.

Primarily, within this limited context, this Motion for Summary Judgment in the habeas corpus proceeding is founded more on law than on facts, although the operative facts at the time-frame of the original trial are as important as the facts as they appear presently. These operative facts are used and useful not only for determining the present status and condition of the Petitioner, are also used from perspective in determining his status and condition during the time-frame of the original criminal trial. Within this context, the facts and the law must be determined taking into consideration the respective dates and times of the events; the actions taken during litigation by the parties; the actions by the trial court; and the actions properly taken by this Court in their review and consideration for habeas corpus purposes.

FINDINGS AND CONCLUSIONS

UPON MATURE CONSIDERATION OF WHICH, including the entire record in this matter, the submissions of the parties and the legal arguments of Counsel, the Court hereby makes the following findings of fact and conclusions of law:

- (1) That this Court has proper statutory and rule-based jurisdiction and venue over the subject matter, as well as the

respective parties hereto, in accordance with the applicable statutory provisions of West Virginia Code §27-6A-1, et seq; §53-4A-1, et seq; §61-2-1, et seq; Rule 56(c) of the West Virginia Rules of Civil Procedure, together with Rules 9 and 10 of the Rules Governing Post-Conviction Habeas Corpus Proceedings in West Virginia, and,

(2) That on or about January 31, 2005, this Court entered an Order granting relief by Summary Judgment to the Petitioner, as outlined above, and it subsequently was determined that said Order was not properly supported by particular findings of fact and conclusions of law, which were omitted, and that in the interests of justice, as well as in compliance with the Rules this Court should issue a Supplemental Order curing those omissions (see WVRCP Rules 39(b) and 56(d), together with WVTCR Rule 23.01 and RGP-CHCPWV Rule 9(c); and,

(3) That whether the Motion is established within the context of a habeas corpus proceeding or not, as outlined above the applicable standard for ruling upon such motions for Summary Judgment is set forth in Rule 56 of the West Virginia Rules of Civil Procedure, wherein the rule cites Gunn v. Hope Gas, Inc., 402 S.E.2d 505 (W. Va. 1991), as a recent holding setting forth the standard as follows:

The test for whether a motion for summary judgment should be granted is essentially the same as the "rather restrictive standard" applied when ruling on motions for judgment on the pleadings. A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts

is not desirable to clarify the application of the law. (underscoring supplied); and,

(4) That for purposes of this proceeding, the most critical issue presented is whether Petitioner's incarceration is illegal and in violation of his constitutional rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article III, Sections 1, 5, 10, and 14 of the West Virginia Constitution, because he was not mentally competent when his original guilty plea was entered and he was not given a full evidentiary hearing on the issue of his mental competency prior to entering his original guilty plea; and,

(5) That a serious question regarding Petitioner's mental competency was raised soon after his arrest on May 8, 1988, when Petitioner attempted to commit suicide in the hospital, where he was recovering from the multiple gunshot wounds inflicted during his arrest. (June 10, 1988 Tr. 40-41; the medical records are included in the record of this case and provide support for the various findings relating to Petitioner's multiple suicide attempts as well as his physical and mental condition).

(6) That based upon these questions about his mental competency, Petitioner was treated, counseled, and examined by several psychiatrists, psychologists, or counselors.

(7) That Dr. Johnnie L. Gallimore, Jr., who is a psychiatrist and a professor of psychiatry at the Marshall University School of Medicine, testified during the June 10, 1988 hearing on Petitioner's motion for bond and motion for mental examination that Petitioner suffered from a major depressive disorder with suicidal tendencies, that he may not have appreciated what he was doing at the time of the crime, and presently would not be able to assist his counsel. (June 10, 1988 Tr. at 8-9, 11, 13-14).

(8) That based upon Dr. Gallimore's uncontradicted testimony, the trial court entered an order on July 7, 1988, requiring Petitioner to be confined in the Weston State Hospital to assist the trial court in determining his mental competency. This confinement at Weston was extended by the August 15, 1988 order.

(9) That Dr. Herbert C. Haynes, a psychiatrist and the Medical Director for the Mental Health Unit at St. Joseph's Hospital in Buckhannon, West Virginia, examined Petitioner on July 15, 22, and 28, 1988.

(10) That in his twelve-page October 12, 1988 report, Dr. Haynes concluded that Petitioner was "not responsible for criminal conduct at the time of the alleged crime because of a mental disease which grossly impaired his ability to conform his conduct to the requirements of the law." (Emphasis added). Dr. Haynes also concluded that "when last seen, Mr. Hatfield was not competent to stand trial. Not by reasons, however, of this lack of comprehension of criminal proceedings or from any impairment of his intelligence, which is at least above average, but from his Major Depression and intense need for punishment as extreme as death." (Emphasis added). Dr. Haynes described Petitioner's actions during his arrest, when he refused to drop his weapon, as an attempt to commit suicide by law enforcement.

(11) That Earnest Watkins, M.A., a licensed psychologist, examined Petitioner on July 21, and August 31, 1988. In his twenty-page October 7, 1988 report, Mr. Watkins concluded, "it is the opinion of this evaluator that Stephen Hatfield is competent to stand trial." (Emphasis added). However, Mr. Watkins further concluded, "it is this evaluator's opinion that Stephen Hatfield experienced at least diminished capacity in terms of his ability to appreciate the wrongfulness of his conduct and/or to conform his conduct to the requirement of the law.

Consequently, it is this evaluator's opinion that Stephen Hatfield is not criminally responsible for the crimes with which he has been charged." (Emphasis added).

(12) That based upon the foregoing expert opinions with respect to Petitioner's mental competency, on September 27, 1988, Petitioner filed a motion for a hearing to determine his mental competency, pursuant to W.Va. Code §27-6A-1.

(13) That on October 12, 1988, the trial court entered an order granting the State's request to have Petitioner evaluated by Dr. Ralph S. Smith, Jr.

(14) That on October 21, 1988, Petitioner was seen by Dr. Smith for a couple of hours. Other than this relatively brief one-time meeting, Dr. Smith never questioned or counseled Petitioner again before issuing his opinion.

(15) That on January 27, 1989, a hearing was supposed to be held on Petitioner's motion to determine whether he was mentally competent to go to trial. However, at this hearing, not a single witness testified under oath, not a single witness was subjected to cross-examination, and, in fact, no sworn testimony of any kind was considered by the trial court.

(16) That at this hearing, the transcript of which consists of six pages, the trial court asked the State for the report from its psychiatrist. However, at the time of this hearing, the State's expert, Dr. Smith, had not completed his report. Instead, the State provided the trial court with a one paragraph letter dated January 23, 1989, without any supporting attachments, in which Dr. Smith stated, "My forensic evaluation of your client was completed October 21, 1988. It is my opinion that Mr. Hatfield is competent to stand trial. I am presently reviewing my records to determine whether or not he is criminally responsible. My full report will follow."

(17) That based upon that one paragraph letter and without making any reference to the

contrary opinions expressed by both psychiatrists, Herbert Haynes, M.D., and Johnnie Gallemore, M.D., the trial court declared "the defendant to be competent to stand trial and will order that he stand trial." (January 27, 1989 Tr. at 51).

(18) That on February 3, 1989, Dr. Gallemore wrote a letter to Petitioner's counsel explaining that Petitioner's mental condition was continuing to deteriorate.

(19) That Dr. Gallemore's continued concern over the deteriorating condition of Petitioner's mental health turned out to be justified. On February 8, 1989, less than two weeks after the trial court had declared that he was mentally competent, Petitioner again attempted suicide in the Wayne County Jail by consuming an overdose of narcotic and tricyclic antidepressants.

(20) That by February 27, 1989, Petitioner had recovered from his second suicide attempt (third if the suicide by police attempt is included) and his case was scheduled for a pretrial hearing. At this hearing, Petitioner's counsel sought a continuance because it had not received the report from Dr. Smith until February 21 or 22, 1989, but this motion was denied. (February 27, 1989 Tr. at 57-59).

(21) That after discussing various procedural matters, Petitioner's counsel Lafe C. Chafin stated on the record, "Mr. Hatfield has requested that we solicit the prosecutor in an attempt to obtain a plea to murder in the first degree with a recommendation of mercy, and we are so doing at this time." (February 27, 1989 Tr. at 71).

(22) That in the ensuing discussions, Petitioner's counsel both stated that they were concerned that Petitioner was not competent to enter a guilty plea and explained that no plea agreement had been explored based upon the concerns expressed by Petitioner's treating

psychiatrists.

(23) That despite these concerns expressed on the record, the trial court engaged in a colloquy with Petitioner, accepted his guilty plea, and on December 6, 1989, the trial court sentenced him to life without the possibility of parole and a term of not less than two nor more than ten years on each of the two malicious wounding charges, with a finding that they were committed with a firearm, all sentences to be served concurrently. (December 6, 1989 Tr. at 200).

(24) That in a letter dated December 18, 1989, that was made a part of the record in this case, Dr. Gallimore expressed his opinion that Petitioner was not mentally competent to enter a guilty plea and was not mentally competent at the time of the crime. Thus, both of the psychiatrists who treated Petitioner agreed that he lacked the mental competency either to enter a guilty plea or to commit these crimes.

(25) That pursuant to this Court's April 2, 2004 order, Dr. Delano H. Webb was appointed to be an expert for the Court and asked to "provide a written summary of the various findings made with respect to Petitioner's mental competency at the time the crime was committed and at the time Petitioner entered his guilty plea." In connection with that order, all of Plaintiff's relevant medical and psychological records were sent to Dr. Webb for his review.

(26) That in a report dated June 29, 2004, Dr. Webb concluded, after reviewing all of these records, "My medical opinion is that Mr. Hatfield was not mentally competent at the time the crime was committed. Further, he was not mentally competent at the time he entered his guilty plea."

(27) That the remaining procedural history in this case is summarized in *State v. Hatfield*,

186 W.Va. 507, 413 S.E.2d 162 (1991), and *State v. Hatfield*, 206 W.Va. 125, 522 S.E.2d 416 (1999).

(28) That the West Virginia Supreme Court, following decisions issued by the United States Supreme Court based upon the United States Constitution, long has held that it is a violation of due process to convict a mentally incompetent person of a crime. In Syllabus Points 1, 2, and 3 of *State v. Milam*, 159 W.Va. 691, 226 S.E.2d 433 (1976), the West Virginia Supreme Court held:

1. No person may be subjected to trial on a criminal charge when, by virtue of mental incapacity, the person is unable to consult 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.

2. Under the provisions of W.Va. Code, 27-6A-1, as amended, a trial court has reason to believe that a defendant in a criminal case may be incompetent to stand trial and orders a mental examination of the defendant, the defendant is entitled as a matter of right to a full evidentiary hearing on the question of his competency.

3. In making any of the findings required by W. Va. Code, 27-6A-1, as amended, a trial court may not simply adopt as its own the recommendations of medical experts, but rather, based on an examination of the totality of the evidence, it should make an independent determination as to whether the defendant is competent to stand trial. (Emphasis added).

(29) That in *Milam*, 159 W.Va. at 697-98, 226 S.E.2d at 438-39, the West Virginia Supreme Court explained the due process principles under the United States Constitution requiring certain procedures to ensure that a criminal defendant is mentally competent:

The Supreme Court of the United States has held that the conviction of an accused when he is legally incompetent violates due process and that State procedures must be adequate to protect this right. *Pate v. Robertson*, 383 U.S. 375, 15 L.Ed.2d 815, 86 S.Ct. 836 (1966). The standards enunciated in *Pate* require a trial court to examine the accused's demeanor, his history of prior mental problems

and similar factors in order to determine whether a mental examination should be conducted and a hearing held to determine the accused's competency. These principles were further developed in *Drope v. Missouri*, 420 U.S. 162, 43 L.Ed.2d 103, 95 S.Ct. 896 (1975). In *Drope*, the Supreme Court gave definition to the procedural aspects for determining the mental capacity of an accused to stand trial. The Court indicated that a statutory procedure was constitutionally adequate to protect the defendant's due process right not to be tried while legally incompetent if the statute: (1) provides that a judge shall on motion or on his own initiative order a psychiatric examination whenever he has reasonable cause to believe that the accused has a mental disease which affects his fitness to proceed; (2) specifies the necessary contents of a report of psychiatric examination; (3) requires the trial court to conduct a hearing if there is a conflict in opinion in the reports of the psychiatric examiners; and (4) authorizes the trial court to hold a hearing on its own motion. (Emphasis added).

In applying *Milam*, *Pate*, and *Drope* to the present case, the trial court was presented with multiple conflicting reports from psychiatrists and psychologists addressing Petitioner's mental competency to go to trial and his criminal responsibility at the time of the crime. Petitioner's own counsel informed the trial court of their concerns regarding Petitioner's competency and inability to enter a guilty plea. This fact is significant because, as the United States Supreme Court observed in *Medina v. California*, 505 U.S. 437, 450, 112 S.Ct. 2572, 2580, 120 L.Ed.2d 353, ___ (1992), "defense counsel will often have the best-informed view of the defendant's ability to participate in his defense." The trial court was aware of Petitioner's multiple suicide attempts, including one attempt after the trial court had declared Petitioner to be mentally competent based upon a letter from Dr. Smith. At the time of the guilty plea hearing, the trial court was provided additional information that one expert considered Petitioner's desire to plead guilty as another attempt to commit suicide. With this conflict in the opinions issued by the experts and this history of suicide attempts, the trial court was required, consistent with due process principles, "to conduct a full evidentiary hearing," where

the various experts would testify under oath and be subjected to cross-examination.

(30) That the present case factually is very similar to *State ex rel. Kessick v. Bordenkircher*, 170 W.Va. 331, 294 S.E.2d 134 (1982), where habeas corpus relief was granted because the trial court failed to hold a full evidentiary hearing on the issue of mental competency prior to accepting a guilty plea. See also *State v. Swiger*, 175 W.Va. 578, 336 S.E.2d 541 (1985) (Trial court erred in finding defendant competent to stand trial in light of contrary psychological evidence). In *Kessick*, the petitioner attempted suicide on four occasions following his arrest and was examined by a psychiatrist, psychologist, and a counselor. The psychiatrist concluded that he was competent to stand trial, while the psychologist disagreed. Despite this conflicting evidence, the trial court accepted the plea agreement negotiated between the parties and this petitioner was sentenced to prison.

(31) That in granting habeas corpus relief, the West Virginia Supreme Court held that because there was sufficient evidence raising an issue about this petitioner's mental competency, the trial court was required to hold a full evidentiary hearing to determine his competency. The failure to hold this hearing prior to accepting the guilty plea violated this petitioner's due process rights. Consequently, the guilty plea was held for naught and the case was remanded for further proceedings.

(32) That by the trial Court failure to provide this full evidentiary hearing, the trial court managed to resolve the issue of Petitioner's mental competency without hearing any sworn testimony from Dr. Smith and without permitting Petitioner to confront Dr. Smith and challenge his opinions. Thus, the most critical decision in this case was made by the trial court based upon a one paragraph letter from Dr. Smith, who was never confronted by Petitioner in any hearing.

(33) That no where in the record is there any explanation as to why the trial court rejected the opinions expressed by Dr. Gallemore and Dr. Haynes, that Petitioner was not mentally competent to go to trial. No where in the record is there any explanation as to why the trial court rejected the opinions expressed by Dr. Gallemore, Dr. Haynes, and licensed psychologist Watkins, that Petitioner was not criminally responsible at the time of the crime. The opinions expressed by Dr. Webb provide further evidence relevant to these mental competency issues. Due process requires that these hotly disputed opinions must be developed in a full evidentiary hearing to ensure that the constitutional rights of Petitioner are protected.

(34) That neither the decision by the West Virginia Supreme Court in *Hatfield I* nor *Hatfield II* addressed the specific due process issue raised in Petitioner's habeas corpus petition. Thus, this habeas corpus proceeding is the first opportunity a court has had to address whether or not Petitioner's due process rights were violated when the trial court determined his mental competency without holding a full evidentiary hearing on the issue.

(35) That this Court's ruling was foreshadowed in the dissenting opinion filed in *Hatfield II*, 206 W. Va. at 130, 522 S.E.2d at 421, by Justice Starcher, who noted, "No competency hearing has ever been held regarding the appellant. It is axiomatic that the conviction of a legally incompetent defendant or the failure of the trial court to provide an adequate competency determination violates due process by depriving the defendant of his constitutional right to a fair trial." Unless and until Petitioner has been afforded the full evidentiary hearing required constitutionally, his conviction is invalid and must be set aside; and,

(36) That our Court subsequent to *Hatfield II*, strengthened the Defendant's right to a meaningful competency evaluation in *State v. Sanders*, 209 W. Va. 367 (2001), wherein the Court

held in Syllabus Point 4 that if a trial Court "...is presented with new evidence casting serious doubt on the validity of the earlier competency finding, or with an intervening change of circumstance that renders the prior determination an unreliable gauge of present mental competency..." the trial Court should further evaluate the Defendant. Further, our Supreme Court held that the fact that a Defendant has been afforded a mental status evaluation and later been found competent to stand trial following an adversarial hearing does not relieve a trial court of its responsibility to remain watchful and vigilant as to the possibility that the Defendant may lapse into incompetency during the course of subsequent proceedings (Sanders, *op cit*); and,

(37) That our Supreme Court even more recently in State v. McCoy, Docket No. 32860, issued May 24, 2006, has held that:

Based upon the above authorities we now hold that, as a general rule, a criminal defendant is entitled to an instruction on any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his/her favor. Consequently, a criminal defendant may present alternative defenses even when they are inconsistent, and the mere fact that a defense may be inconsistent with an alternate defense does not justify excluding evidence related to either defense (emphasis supplied). As a result of the above holding, it is clear that the trial court committed error in its pre-trial ruling denying Mr. McCoy the right to put on the defense of self-defense merely because such defense may be inconsistent with insanity. See Flake v. State, 245 S.W. 174, 175 (Ark. 1922) ("[T]here was testimony on behalf of the appellant which tended to prove that the appellant was insane at the time of the killing. . . . There was testimony on behalf of the appellant also which tended to prove that he killed Wilson in self-defense. The appellant had the right to go before the jury on the issue as to whether or not he was insane at the time of the killing, and also whether or not the killing was done in self-defense.""). See State v. McCoy, *op cit*.; and,

(38) That given the previous points and authorities outlined by our Supreme Court cited above, which rely on both State and federal constitutional and statutory rights in the protection of the Defendant (here Petitioner) against being tried or convicted for a crime while he or she is mentally incompetent (see Syllabus Point No. 1 in State v. Sanders, *op cit*), our Supreme Court has now extended that right, and the protections that support it, to that of the express ability of the Defendant

even to present inconsistent defenses to the trial jury contemporaneously, one of incompetence and one of competence. As a result, there can be no mistaking the fundamental character of competence has in any jury trial involving the issue of culpability for alleged wrongful conduct; and,

(39) That after taking all of the above into consideration, including the original operative facts at the time of the trial, in light of the status and condition of the Petitioner at the present time, as well as the legal point and authorities addressed herein, the Court has determined that it is just and proper, as well as fair and equitable, to GRANT the Petitioner's WVRCP Rule 56(c) Motion for Summary Judgment, as to ground one, with all other grounds thereby becoming moot, and to require the proper relief asset forth hereafter; and,

(40) That to all of which the Defendant and the Petitioner do hereby respectfully OBJECT AND EXCEPT to the Court's findings and conclusions stated herein.

(41) That in doing so, this Court expressly acknowledges that it has therefore complied with the controlling provisions of Rule 9(c) of the Rules Governing Post-Conviction Habeas Corpus Proceedings in West Virginia, in that:

- (A) the Court has issued herein findings as to whether a state and/or federal right was presented in each ground for the petition; and,
- (B) the Court has issued herein findings of fact and conclusions of law addressing each ground raised in the petition; and,
- (C) the Court has made herein specific findings as to whether the petitioner was advised concerning his obligation to raise all grounds for post conviction relief in one proceeding; and,

(D) the Court has determined that the Petitioner did not appear pro se, and did not waive any rights thereby.

All of this is hereby ORDERED, ADJUDGED AND DECREED.

It is further hereby so ORDERED, ADJUDGED AND DECREED that the Petitioner's previous conviction for one (1) count of "Murder in the First Degree", in violation of the applicable provisions of West Virginia Code §61-2-1, and for two (2) counts of "Malicious Wounding", in violation of the applicable provisions of West Virginia Code §61-2-9, and the statutory sentences imposed therefore, are hereby set aside; and,

It is further hereby so ORDERED, ADJUDGED AND DECREED that the State of West Virginia may proceed against the Petitioner/Defendant, Stephen Westley Hatfield, in accordance with the original Indictment, and the constitutional and statutory due process attendant thereto.

It is further hereby ORDERED, ADJUDGED AND DECREED that the Clerk of this Court shall provide timely notice of this Supplemental Order, following its entry, by forwarding a certified copy hereof upon all parties of record, in accordance with the applicable provisions of Rules 10.01-12.06, as well as 24.01, of the West Virginia Trial Court Rules by USPS First Class Mail, Certified Return Receipt Requested; by hand delivery; or by facsimile transmission.

ISSUED on this the 16th day of March, 2007, A. D.



Jay M. Hoke

Special Judge
Jay M. Hoke

A COPY TESTE
Milton J. Ferguson II Clerk
By *[Signature]* Deputy

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