
NO. 33830

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

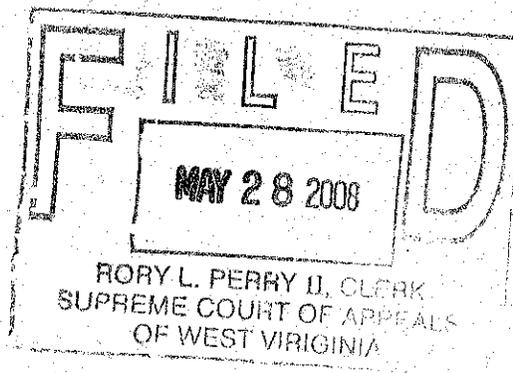
STATE OF WEST VIRGINIA,

Appellee,

v.

HEATHER MARIE HAAPT,

Appellant.



BRIEF OF APPELLEE, STATE OF WEST VIRGINIA

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I.

**KIND OF PROCEEDING AND
NATURE OF THE RULING BELOW**

This is an appeal by Heather Marie Haupt (hereinafter "Appellant") from the January 5, 2007, order of the Circuit Court of Pocahontas County (Rowe, J.), which sentenced her to serve a term of one year to three years in the State penitentiary with said term to be suspended pending her completion of a youthful offender program at the Anthony Correctional Center for a period of six to twenty-four months on the basis of West Virginia Code § 25-4-6, upon her guilty plea to possession and attempted delivery of a Schedule IV controlled substance in violation of

West Virginia Code § 60A-4-401. On appeal, Appellant claims that the circuit court erred in accepting her guilty plea due to her being mentally incompetent to do so.

II.

STATEMENT OF FACTS

Appellant was romantically involved with David Mace, who was incarcerated at the Tygart Valley Regional Jail. (Plea Hr'g, 15, Nov. 22, 2006.) In a coded message, Mr. Mace wrote Appellant a letter asking her to bring him Xanax tablets when he had to appear at a Pocahontas County court proceeding on October 18, 2006. (*Id.* at 16.) Appellant brought a package of five Xanax tablets to this proceeding and attempted to deliver these drugs to Mr. Mace by making gestures to him in the courtroom. (*Id.*)

Robin Friel, a corrections officer with the Pocahontas County Sheriff's Department witnessed these gestures, and searched Appellant. Upon conducting a search, the corrections officer found the controlled substances tucked down in front of Appellant's pants. Upon examination by a forensics laboratory, the tablets were discovered to be Alprazolam, a Schedule IV controlled substance. (*Id.*)

At a plea hearing on November 22, 2006, Appellant pled guilty to this charge. (Plea Hr'g, 16-17, Nov. 22, 2006.)

Specifically, the following exchanges took place during the plea hearing:

Court: Well, in the course of those discussions [between Appellant and her counsel] you have explained to her the nature of the charge, correct?

Counsel: I have, Your Honor.

Court: As well as what possible lesser included offenses she could be found guilty of if she were to go to trial?

Counsel: I have, your honor.

Court: Have you explained what possible penalty that can be imposed?

Counsel: I have.

Court: And what have you told her with respect—

Counsel: — I have told her that if she goes to trial that she will, in fact, — that we have— I don't want to say (inaudible) will be but the evidence that Mr. Weiford [Prosecutor] presented us that, in fact, it would be an uphill battle, and that, in fact, even pleading now she's facing a one to three years in the penitentiary and there is no guarantee, even with Mr. Weiford— even if Mr. Weiford may, in fact, recommend probation, even if he does, there's no guarantee that you will, in fact, grant that because that's strictly up to the Court and its discretion.

I also told her, as always, I also told this one has with it also up to a \$10,000 fine and/or both the imprisonment sentence that the Court wishes to impose both or neither.

Court: Is that correct, Ms. Haupt?

Appellant: Yes.

Court: You understand that?

Appellant: Yes.

Court: And so the possible sentence is what?

Appellant: Yes.

Court: Is what?

Appellant: Is one to three.

Court: One to three. Do you understand you would also be a convicted felon, couldn't possess a firearm—

Appellant: — yes, I understand all that.

* * *

Court: Do you understand what it [the indictment] charges you with?

Appellant: Yes.

Court: Did Mr. Francis [counsel] explain to you what constitutional rights you would be waiving or giving up if you are not to exercise your right to a trial by jury?

Appellant: Yes.

* * *

Court: Have you been able to communicate with Mr. Francis?

Appellant: Yes.

Court: Have you understood the things he explained to you?

Appellant: Yes.

Court: And has he listened to you?

Appellant: Yes.

Court: Are you satisfied with his representation and advice?

Appellant: Yes, I am.

Court: Whose decision to enter the plea is it, yours or somebody else's?

Appellant: What was the question again?

Court: Whose decision to enter this plea is it, yours—

Appellant: My decision.

Court: Thank you. Ms. Haupt, what is your plea to the indictment that charges the felony offense of possession with intent to deliver a Schedule IV controlled substance?

Appellant: Guilty.

* * *

Court: Do you truly and voluntarily enter this plea?

Appellant: Yes.

(*Id.* at 6-17.)

III.

RESPONSE TO ASSIGNMENT OF ERROR

Appellant's issue is quoted below, followed by the State's response:

[W]hether the petitioner [Appellant] had the mental competency to stand trial or enter a guilty plea, the test for either being the same.

State's Response:

Appellant had the mental competency to enter a guilty plea; she was able to consult with her attorney with a reasonable degree of rational understanding in her defense and had a rational and factual understanding of the proceedings against her, based on a preponderance of the evidence.

IV.

ARGUMENT

WHEN EXAMINING THE TESTIMONY AND REPORTS OF BOTH EXPERTS AS WELL AS THE RESPONSES OF APPELLANT AND HER COUNSEL, APPELLANT HAD THE CAPACITY TO ENTER A GUILTY PLEA, DESPITE SOME MENTAL DIFFICULTIES, BASED ON A PREPONDERANCE OF THE EVIDENCE.

Appellant contends that she was mentally incompetent to plead guilty to the offense with which she was charged. There is no doubt that Appellant had some mental difficulties. However, when examining the testimony of the psychologist and psychiatrist who testified at the hearing and applying the standard established by this Court, she indeed could stand trial and enter a plea of guilty based on a preponderance of the evidence. The responses to an extensive inquiry by the circuit court

of her and her attorney also show that she had this capacity. Thus, her guilty plea should not be vacated, and the case should not be remanded.

1. **The Standard of Review.**

In this type of competency hearing, the standard for appellate review is whether the finding is supported by a preponderance of the evidence. The trial judge serves as the finder of fact. *W.Va. Code* § 27-6A-2(b) [1979]; *State ex. rel. Williams v. Narick*, 164 W.Va. 632, 641, 264 S.E. 2d 851, 857 (1980).

State v. Jenkins, 180 W.Va. 651, 654, 379 S.E.2d 156, 158 (1989).

“To be competent to stand trial, a defendant must exhibit a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational, as well as factual, understanding of the proceedings against him.” Syl. Pt. 2, *State v. Arnold*, 159 W.Va. 158, 219 S.E.2d 922 (1975); Syllabus Point 4, *State ex. rel. Williams v. Narick*, 164 W.Va. 632, 264 S.E.2d 851 (1980).

The test for mental competency to stand trial and the test for mental competency to plead guilty are the same.

Syl. Pts. 1 and 2, *State v. Cheshire*, 170 W. Va. 217, 292 S.E.2d 628 (1982); Syl. Pts. 1 and 2, *State ex. rel. Kessick v. Bordenkircher*, 170 W. Va. 331, 294 S.E.2d 134 (1982).

2. **The Trial Court Made the Correct Decision Based on a Preponderance of the Evidence in Ruling Appellant Competent to Enter A Guilty Plea. Although Appellant Suffered from Some Mental Difficulties, She Still Had the Competency to Plead Guilty When This Court’s Standard Is Applied.**

Despite Appellant having some significant mental difficulties, she was still competent to plead guilty based on the standard set by this Court when the expert testimony and reports as well as her and her counsel’s testimony are examined. There is no doubt that Appellant had some mental impairment. Competency evaluations were conducted on Appellant in accordance with West Virginia Code § 27-6A-2. Based upon her March 17, 2006 report, Katherine Ball, the psychologist who examined Appellant, testified at the competency hearing that the latter suffered from an Axis

2 diagnosis of mild retardation. (Competency Hr'g, 20, June 23, 2006.) In her report, Ms. Ball stated that Appellant thinks and performs at about a third grade level. (Ball Report, 12, March 17, 2006.) Additionally, Dr. Douglas Eitel, a psychiatrist, testified that Appellant had a functional IQ level of a third grader. (Competency Hr'g, 35, June 23, 2006.) Yet, when examining all of the testimony and reports on the basis of the standard set in *Cheshire, supra*, and *Bordenkircher, supra*, the circuit judge found based on a preponderance of the evidence that Appellant could consult with her attorney with a reasonable degree of rational understanding, and that she had a rational and factual understanding of the proceedings against her.

Initially, Ms. Ball testified that Appellant has limitations but also has abilities. (Competency Hr'g, 6, June 23, 2006.) On various occasions, Ms. Ball stated that Appellant could assist her attorney in her defense, as is akin to the standard established in Syllabus Point 1 of both *Cheshire, supra*, and *Bordenkircher, supra*. Ms. Ball testified that Appellant was able to assist her attorney in her defense, could cooperate with her attorney and understood the role of her counsel and the prosecutor. (Competency Hr'g, 6, 7-8 and 11, June 23, 2006.) The psychologist also said that Appellant understood that she had the right to counsel. (*Id.* at 14.) In her report, Ms. Ball stated the following:

Heather did express confidence in her attorney and believes that he is trying to keep her out of jail. She was open and forthright with the examiner and is able to respond fully to any questions. She should be able to cooperate fully with her attorney.

(Ball Report, 11, March 17, 2006.)

Ms. Ball testified that Appellant understands criminal proceedings on a basic level. (Competency Hr'g, 7, June 23, 2006.) The most damaging aspect of Ms. Ball's testimony regarding Appellant's competency was that the latter had problems retaining information. (*Id.* at 15.)

However, she also stated that although Appellant may have problems understanding nuances regarding her role in the courtroom over time, she could comprehend it at a particular moment and may be able to maintain this longer term with reiteration and assistance of counsel. (*Id.* at 14.) Ms. Ball concluded that Appellant should not be excused from criminal conduct if factually guilty with her level of understanding. (*Id.* at 16.) All of this goes to Appellant having a rational and factual understanding of the proceedings against her; and thus, being competent to plead guilty in accordance with *Cheshire, supra*, and *Bordenkircher, supra*.

It is true that Dr. Eitel found Appellant incompetent to stand trial or plead guilty in his report. Specifically, the psychiatrist opined the following:

It is my medical opinion that Ms. Haupt does not have sufficient capacity to assist her attorney in her defense. She has a satisfactory understanding of her legal charges. She has a poor understanding of the criminal proceedings and the court system. She also has a poor understanding of her constitutional rights. Ms. Haupt has a difficult time understanding the roles of the judge, jury, prosecutor and her defense attorney. She has a difficult time explaining evidence, witnesses, plea bargaining or Fifth Amendment rights. She cannot explain perjury. She cannot explain the difference between a hearing and a trial. She cannot explain the difference between a conviction and a sentence. She does not understand the meaning of a verdict. She is unable to explain possible types of sentences. She does not understand the term "contempt of court". She can explain the term "alibi."

(Eitel Report, 5-6, May 1, 2006.) As strong as this statement is toward establishing that Appellant was incompetent to stand trial or plead guilty, it is to a substantial degree, contradicted by Ms. Ball's report and testimony.

Although not as strong as his report, the testimony of Dr. Douglas Eitel is more helpful in establishing Appellant's claim as well. He said that he was "less enthusiastic" about Appellant's ability to waive her right to trial and make reasoned decisions with the assistance of her attorney and her family. (*Id.* at 33.) Yet his testimony at the competency hearing was not as strong as the

language of his May 1, 2006 report. He also testified that her case was not clear-cut. (*Id.* at 23.) Additionally, Dr. Eitel testified that she appreciated what she did was wrong and that she was criminally responsible for her actions. (*Id.* at 27-28.) The psychiatrist did state that Appellant lacks persistence and motivation, but with these qualities, she could be able to stand trial for an extended period of time. (*Id.* at 29.) Dr. Eitel testified that if her attorney were to give her some knowledge of jail or prison and explain to her that in order to avoid this, she would have to learn some things he talked to her about, that would be helpful in giving her the motivation to respond to these instructions. (*Id.* at 34-35.) At no time during his testimony did Dr. Eitel testify that Appellant could not consult with her attorney with a reasonable degree of rational understanding, or that she did not rationally or factually understand the proceedings against her, as he stated in his report. In fact, he seems to state that, although she had some significant difficulties, Appellant was capable of consulting with her counsel and exhibiting a rational and factual understanding of the proceedings against her. When examining Dr. Eitel's testimony at the plea hearing that is less favorable to the State's position, it appears the standards in *Cheshire, supra*, and *Bordenkircher, supra*, have still been met, and Appellant was competent to plead guilty.

Further, from the lengthy questioning of the circuit judge and responses from the Appellant and her counsel outlined above, she did have a factual and rational understanding of the proceedings against her and could consult with her attorney in her defense. Through extensive questioning by the trial judge, both Appellant and her attorney established unequivocally that she was competent to plead guilty. (Plea Hr'g, 6-17, Nov. 22, 2006.) In an order dated November 22, 2006, the circuit judge found that Appellant knowingly and intelligently waived her constitutional rights, and that she freely, voluntarily, intelligently, knowingly and understandingly tendered to the Court her written

and oral plea to the charge. (R. at 157.) The standard established in *Jenkins, supra*, whereby competency must be shown by a preponderance of the evidence was met. Appellant stresses her lack of intelligence in asserting that she was incompetent to plead guilty. However, in *Jenkins, supra*, this Court upheld a trial court finding that based on the preponderance of the evidence in a competency hearing the defendant was capable to stand trial where he possessed an IQ of 65. *Id.*, 180 W. Va. at 654, 379 S.E.2d at 159.

Appellant correctly states that this Court held in *Call v. McKenzie*, 159 W. Va. 191, 220 S.E.2d 665 (1975), that “yes or no” questions should be avoided in such inquiries as to a defendant’s competency to stand trial. *Id.* at 197, 220 S.E.2d at 670. However, along with such questions, the circuit judge also asked Appellant more detailed questions in this exchange such as the possible penalty for the offense and whose decision it was to enter the plea. (Plea Hr’g, 7, 14, Nov. 22, 2006.) This Court also held in *Call, supra*, that technical legalistic terms should be avoided in favor of words that a layman defendant would understand. *Id.* This was carried out throughout the questioning as when the trial judge explained that incriminating oneself meant saying something to make one guilty and his elaboration in explaining that her becoming a convicted felon could take away some of her civil rights such as possessing a firearm. (Plea Hr’g, 12, 8, Nov. 22, 2006.)

Again, Appellant correctly stresses that Dr. Eitel in his May 1, 2006, report opined that she was not capable of assisting her attorney in her defense nor had a factual and rational understanding of the proceedings against her. However, in *Jenkins, supra*, this Court affirmed the circuit court’s ruling that the defendant was competent to stand trial based on a preponderance of the evidence, where one psychologist found him incompetent to stand trial and a psychologist and psychiatrist unequivocally testified that he was able to assist his counsel and understood the charges against him.

Id., 180 W. Va. at 654, 379 S.E.2d at 159. The Court upheld the circuit court decision based on the studies of the psychologist and psychiatrist that deemed the defendant competent as well as the fact that the judge was able to observe his demeanor. *Id.* In this case, the circuit court found Appellant competent to enter a plea of guilty based on Ms. Ball's report and testimony as well as the extensive testimony of her and her attorney, despite the contradictory opinion expressed in Dr. Eitel's report.

The guilty plea should not be vacated nor should the case be remanded. However, if this Court feels that the evaluations were inadequate to establish that Appellant was competent to enter a guilty plea due to the contradictory nature of these forensic evaluations, the State would recommend a 15-day commitment in a mental health facility in order to have a different psychiatrist or psychologist and psychiatrist conduct additional evaluations in accordance with West Virginia Code § 27-6A-2(d).¹ Specifically, this provision states the following:

If the court determines that the defendant has been uncooperative during the forensic evaluation ordered pursuant to subsection (a) of this section or there have been one or more inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section and the court has reason to believe that an observation period is necessary in order to determine if a person is competent to stand trial, the court may order the defendant be committed to a mental health facility designated by the department for a period not to exceed fifteen days and an additional evaluation be conducted in accordance with subsection (a) of this section by one or more qualified forensic psychiatrists, or a qualified forensic psychiatrist and a qualified forensic psychologist. The court shall order that at the conclusion of the fifteen-day observation period the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

¹Appellant argues that the circuit court should have ordered a 20-day commitment for additional evaluations due to the conflict in accordance with the West Virginia Code § 27-6A-1(b). That statutory provision was amended in 2007, whereby the 15-day commitment for additional evaluations was enacted in its place.

There is nothing in the record that indicates that Appellant requested such additional evaluation during the competency and plea hearings. Had she done this, such request, more than likely, would have been granted by the circuit court.

V.

CONCLUSION

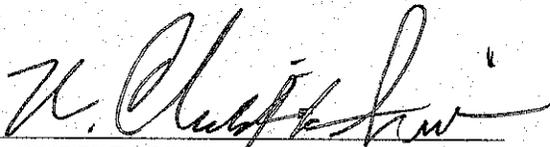
For the foregoing reasons, the judgment of the Circuit Court of Pocahontas County should be affirmed by this Honorable Court.

Respectfully submitted,

State of West Virginia,
Appellee,

By counsel

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

The undersigned counsel for Appellee hereby certifies that a true and correct copy of the foregoing *Brief of Appellee, State of West Virginia* was mailed to counsel for the Appellant by depositing it in the United States mail, first-class postage prepaid, on this 28th day of May, 2008, addressed as follows:

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