

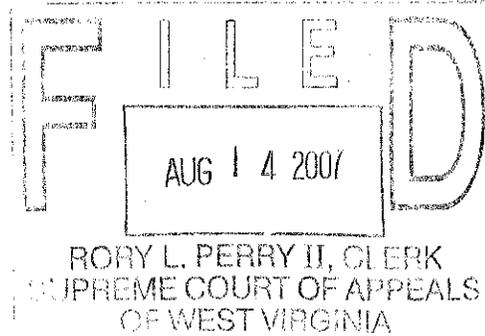
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. _____

HEATHER MARIE HAAPT,
Petitioner,

VS

STATE OF WEST VIRGINIA,
Respondent.



PETITION FOR APPEAL OF CRIMINAL CONVICTION
IN POCAHONTAS COUNTY, WEST VIRGINIA

To the Honorable Justices of said Court, the Petitioner, by her counsel, Geoffrey S. Wilcher, 1985 Sweet Springs Valley, Gap Mills, West Virginia presents the following:

1. THE ISSUE

Petitioner's counsel submits that the issue to be determined herein is fairly straight forward. Namely, whether the Petitioner had the mental competency to stand trial or enter a guilty plea, the test for either being the same. Syllabus Point 2, *State v. Cheshire*, 170 W.Va. 217, 292 S.E.2d. 628 (1982).

2. THE KIND OF PROCEEDING IN THE LOWER COURT

The Petitioner was arrested on October 18, 2005 and charged with the felony offense of the attempted delivery of a controlled substance. Eric M. Francis was appointed to represent the Petitioner. She waived her right to a preliminary hearing on November 1, 2005. A True Bill was returned against the Petitioner by the December, 2005 Pocahontas County Grand Jury, charging her

with the felony offense of possession with intent to deliver a Schedule IV controlled substance. She was arraigned and her counsel, subsequently, on March 7, 2006, moved the Court to Order a competency evaluation. On March 10, 2006, the Circuit Court Ordered Katherine Ball, a licensed psychologist, to conduct "all necessary psychiatric and psychological evaluations...." Obviously, Ms. Ball is not qualified to conduct a psychiatric examination and at some subsequent time, Dr. Douglas R. Eitel, MD, JD, MBA, was engaged to render a forensic psychiatric report.

3. THE PSYCHOLOGICAL EVALUATION AND FORENSIC PSYCHIATRIC REPORTS

Both Ms. Ball and Dr. Eitel agree that the Petitioner is functioning at the academic level of a third grader. Dr. Eitel puts her Full Scale IQ at 54. Both agree that she is mentally retarded but that she is able to understand, in the most basic terms, that what she did was wrong but that her ability to readily understand the seriousness of the charges against her is very much impaired.

Ms. Ball, at page 12 of her report, does not believe that the Petitioner is capable of attaining a GED. She does not believe that Ms. Haupt would be able to maintain compliance in a residential facility with peers who may not have her best interest at heart. Furthermore, Ms. Ball does not believe that Ms. Haupt can comply with the requirements of probation if living with her mother. Nor would she benefit from incarceration as she already tends to be easily led by those with criminal intentions. However, Ms. Ball found that Ms. Haupt should be able to

cooperate fully with her attorney. That, of course, as discussed, *infra*, is not the standard to be addressed.

On the other hand, Dr. Eitel on page 5 of his report states unequivocally that:

"It is my medical opinion that Ms. Haupt does not have sufficient capacity to assist her attorney in her defense."

That, of course, is the proper standard of inquiry. Syllabus Point 1, *Cheshire, supra*. He goes on to say while she has a satisfactory understanding of the charges against her, she has a poor understanding of the criminal proceedings and the court system, in addition to a poor understanding of her constitutional rights. Also, she has a difficult time explaining "evidence, witnesses, plea bargaining, or fifth amendment rights." Furthermore, she cannot explain perjury (regardless of the terminology he used), or the difference between a hearing and a trial or the difference between a conviction and a sentence. Dr. Eitel also says that Ms Haupt does not understand the meaning of a verdict and is unable to explain possible types of sentences. All inquiries which are consistent with the enlightened decision of former Justice Neely in *Call v. McKenzie*, 159 W.Va. 191; 220 S.E.2d 665 (1975).

It is also Dr. Eitel's medical opinion that Ms. Haupt displays minimal persistence and motivation for learning new tasks and that she also has a poor attention span and memory skills. Therefore he expects that educational programs to develop competency would provide minimal, if any, benefit.

4. FURTHER PROCEEDINGS IN THE CIRCUIT COURT

In the order dated June 23, 2006, Circuit Court Judge Rowe astutely noted that the above referred to reports were in conflict on the question to be determined and that therefore the Court had scheduled this date for the taking of the testimony of Ms. Ball and Dr. Eitel, in order to attempt to clarify their respective opinions.

The Petitioner submits that the testimony did not resolve the conflict and that both experts maintained the position of their written opinions. Ms. Ball does state that at the time of the allegation Ms. Haupt understood it to be wrong and that she thought that Ms. Haupt had the ability to assist her attorney in her defense, with some significant reservations. See page 6 of the June 23, 2006 hearing transcript. At page 11 of the above referred to transcript, under questioning from Prosecutor Walter Weiford regarding Ms. Haupt's difficulty understanding the role of the Court, the Judge, the bailiff or the jury, Mr. Weiford inquired whether Ms. Haupt could be brought to understanding with education or assistance from her attorney, Ms. Ball replied;

"I think it will take some persistence and regularity. I don't think that her attorney and her mother would be able to give it enough time to – for that. I think it would require a structured education program to educate her to that." (emphasis added).

At page 17 of the transcript, Mr. Weiford inquires about whether she could knowingly and intelligently waive her constitutional rights and enter a guilty plea to a misdemeanor if that were extended to her. Ms. Ball replied as follows:

"At this point I believe she understands, to a degree, what the charges are against her and that there may be consequences, including jail, and she has trust in her attorney and her mother to help her make decisions. And I believe

that because the consequences of the misdemeanor would be rather finite as opposed to long term I think that she would be able to, yes, waive her rights, or plea bargain, to a misdemeanor.” (emphasis added).

Presumably, Ms. Ball does not think Ms. Haupt could knowingly and intelligently enter into a plea agreement based on a felony.

Petitioner submits that Dr. Eitel summarized very well his medical opinion at page 27 of the transcript.

A “Okay. I believe that she knew that what she was doing was wrong and she could appreciate that what she was doing was wrong at the time of the act. With regard to her ability to assist her attorney in her defense I think it is quite minimal. Again, it would be more related to the concrete evidence and once again, once you get to the more abstract areas it would take a great deal of education and I doubt that she has the motivation or persistence to handle that type of education. And I think it would be quickly lost.”

At page 32 of the transcript the following exchange took place between Mr. Weiford and Dr. Eitel:

“Q Do you share Ms. Ball’s opinion that she {Ms. Haupt} could knowingly and intelligently waive her right to trial, her freedom from self incrimination and enter a guilty plea to a misdemeanor even if it meant the possibility of some time in jail?

A I’m less than enthusiastic that she’d really understand what she was doing. I think she would do what she thought people suggested to her or what she thought you wanted her to do without the full understanding.

Q Do you think she could make a reasoned decision with the advice of counsel and with the advice of her family?

A I’m less than enthusiastic about that one as well.”

Therefore, despite the clearly conflicted testimony regarding the petitioner’s ability to assist in her defense, the Circuit Court stated in its order of June 23, 2006, that;

“As to the question of competency to stand trial and to assist counsel in the preparation of a defense, the Court FINDS that the defendant has the

capacity to understand, therefore it is the further FINDING of the Court that the defendant is competent to stand trial and assist counsel."

However, that is not really the standard. "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." *Cheshire, supra*; Syllabus Point 4, *State ex rel. Williams v. Narick*, 164 W.Va. 632, 264 S.E.2d 851 (1980); Syllabus Point 2, *State v. Arnold*, 159 W. Va. 158, 219 S.E.2d 922 (1975); see also, *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960)." It is the rational part that the Petitioner apparently has a problem with. It is the Petitioner's position that, clearly, the reports and testimony did not constitute a preponderance of the evidence as to the Defendant's competency to stand trial in accordance with *West Virginia Code* § 27-6A-2(b). At the very least, when the Court was presented with the admittedly conflicting reports, the Petitioner believes that the Court should have ordered an additional twenty day examination as provided for in *West Virginia Code* § 27-6A-1(b).

Also, despite the consistent testimony of Ms. Ball and Dr. Eitel that Ms. Haupt could not be educated with any degree of retention to the criminal process and roles of the persons involved by her counsel or her mother, the Court goes on in its Order of June 23, 2006, to suggest that defense counsel do just that. Furthermore, despite the testimony of both Ms. Ball and Dr. Eitel that Ms. Haupt probably could not knowingly and intelligently enter into a plea bargain regarding a felony, the Circuit Court permitted Ms. Haupt to do just that. During the Court's *Call* inquiry mostly "yes or no" answers were solicited from the Petitioner. Upon

questions which required more than a "yes or no" answer the Petitioner stumbled, which, given her circumstance should have raised an additional red flag as to her ability to understand the proceeding. See, for example, page 12 of the Plea Hearing transcript dated November 22, 2006.

5. PRAYER FOR RELIEF

Wherefore, the Petitioner requests this Court to vacate her guilty plea and to remand the case to Circuit Court for further observation and examination at a mental health facility, in accordance with *West Virginia Code* §27-6A-1(b).

Petitioner, Heather Marie Haupt,
By Counsel



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