

patients are treated with clozapine because of the risk of agranulocytosis. Refusal to submit to such testing precludes treatment with clozapine.

In *Iseley v. Beard*, the court supported the view that refusal to submit to adjunctive psychological treatment and testing precludes interferon treatment for HCV.

Standards for Determination of Competence

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An Objective Unreasonableness Standard Should be Utilized in the Application of Governing Law for Determinations of Competence

In *Maynard v. Boone*, 468 F.3d 665 (10th Cir. 2006), the United States Court of Appeals for the Tenth Circuit considered the legal standards for determining competence to stand trial and to waive counsel. Applying an objective unreasonableness standard of review under the Antiterrorism and Effective Death Penalty Act (AEDPA), § 28 U.S.C. 2254 (2005), during a retrospective hearing, the court of appeals affirmed the finding of competence and the acceptance of the waiver of counsel made by the trial court.

Facts of the Case

On March 4, 1988, Larry D. Maynard shot James Cass. He was subsequently arrested and charged in Osage County, Oklahoma, with shooting with intent to kill. At the time of his arrest, Mr. Maynard had unrelated outstanding charges in Delaware County, for which he was found incompetent to stand trial, and he was committed to an Oklahoma state hospital. Proceedings in the Osage County criminal matter were stayed.

In March 1989, Mr. Maynard was found competent to stand trial by a Delaware County jury. The

District Attorney for Osage County then recommended that proceedings resume in his criminal matter pending there. However, Mr. Maynard requested a formal hearing for competency determination in that jurisdiction. He was found by a jury to be competent on September 4, 1990, and a trial date was set for March 19, 1991. Before the trial date, Mr. Maynard waived his right to counsel and moved to proceed *pro se*. At a hearing held one day before trial, the motion was granted. Following a four-day trial, Mr. Maynard was found guilty and sentenced to 99 years' imprisonment.

Mr. Maynard appealed the verdict, but due to procedural delays, the Oklahoma Court of Criminal Appeals (OCCA) did not issue an opinion on the matter until 1999, when it vacated the conviction on the grounds that the trial court had instructed the jury to apply an unconstitutionally high burden of proof to establish incompetence. The OCCA remanded the case to the trial court to determine whether a retrospective hearing of competence under a constitutional standard was feasible, given the passage of so many years. The trial court determined that a retrospective hearing was feasible, and in December 1999 a jury determined that Mr. Maynard had been competent to stand trial in 1991. On direct appeal in 2000, the OCCA affirmed the jury's determination, upholding Mr. Maynard's conviction and denying any other claims of error from the original trial. Mr. Maynard subsequently petitioned for a writ of *habeas corpus*, challenging his conviction on the grounds that he should not have been found competent to stand trial and that his waiver of counsel was invalid. The United States District Court for the Northern District of Oklahoma denied the petition on the merits. Mr. Maynard then appealed to the United States Court of Appeals for the Tenth Circuit.

Ruling and Reasoning

Under the AEDPA, the legal standard for reviewing a state court's decision that resolves an appeal on the merits is whether the decision is contrary to or involves an unreasonable application of clearly established federal law, as determined by the U.S. Supreme Court. In review of factual matters, a writ can be granted only in cases in which a state decision has been based on an "unreasonable determination of the facts in light of evidence presented" (*Williams v. Taylor*, 529 U.S. 362, 404 (2000)). The appeals court noted that to be found unreasonable, a decision must

extend beyond the boundaries of permissible differences of opinion and fall between clearly erroneous and unreasonable to all reasonable jurists.

The court of appeals considered Mr. Maynard's claims that the state courts applied the wrong legal standard for determining competence; erred in conclusions about the sufficiency of evidence supporting a finding of competence; improperly allowed a retrospective competence hearing; and wrongfully allowed him to waive his right to counsel. In light of the governing AEDPA standard of review, the court of appeals concluded that the district court did not err in denying Mr. Maynard's petition.

Regarding the legal standard for competence, the appeals court noted that at the time of the initial determination, the jury had been instructed to use clear and convincing evidence, rather than the more correct preponderance of evidence standard of proof. However, at the retrospective hearing, the correct standard was used. Thus, the appeals court focused on the nature of the jury instructions provided at the time of the competency determination. The court of appeals agreed with the district court that despite the omission of the word "factual," the instructions to the jury satisfied both the *Dusky* and *Godinez* (*Godinez v. Moran*, 509 U.S. 389 (1993)) standards, as the instructions clearly presented the concepts of factual and rational understanding, as well as the need to be able to assist counsel effectively and rationally.

Regarding the sufficiency of the evidence in support of competence, Mr. Maynard argued that the jury improperly rejected expert testimony of incompetence and wrongly credited the testimony of lay witnesses (including a jail official who testified that Mr. Maynard understood the charges against him and was able to communicate with his attorneys). The district court found the evidence for competence to be sufficient. The court of appeals considered whether the facts were correct and whether the law was properly applied. The court noted that under the AEDPA, the trial court's conclusions are afforded a presumption of factual correctness, which, in this case, can only be overcome by clear and convincing evidence that the defendant was incompetent at the time of trial. Mr. Maynard argued that the fact that the expert's testimony was un rebutted at trial overcomes the presumption of correctness afforded the trial court. The district court disagreed with this claim, indicating that the trial court did not require the jury to accept expert opinions. The court of ap-

peals agreed with the district court's ruling, upholding the assumption of correctness of the trial court's conclusions. Under the AEDPA, a challenge to the sufficiency of evidence must establish that no rational trier of fact could have made a similar determination. While the appeals court indicated that the facts on record may have led it to a different finding, it found that Mr. Maynard had failed to present clear and convincing evidence that a rational jury could not have found him competent based on a preponderance of the evidence.

Mr. Maynard next argued that the district court erred in accepting a determination of competence made at a retrospective hearing. The court of appeals cited *McGregor v. Gibson*, 248 F.3d 946, 962 (10th Cir. 2001), which states that although disfavored, retrospective determinations of competence may be allowed in cases when a meaningful hearing can be conducted. Mr. Maynard argued that the passage of significant time and lack of available contemporaneous evidence should have precluded such a hearing. The appeals court determined that the OCCA did not unreasonably apply Supreme Court precedent in regard to the amount of time passed (*Pate v. Robinson*, 383 U.S. 375 (1966)) or the way this precedent can be interpreted regarding conditions sufficient for a meaningful retrospective determination (*Clayton v. Gibson*, 199 F.3d, 1162 (10th Cir. 1999)). The court of appeals found no support for Mr. Maynard's claims, upheld the district court's decision in rejecting his arguments, and agreed that the OCCA's determination was not an unreasonable application of Supreme Court law.

Regarding his waiver of right to counsel, Mr. Maynard claimed that his waiver was invalid and thus should not have been accepted. The court of appeals reviewed the OCCA's decision under the AEDPA's objective unreasonableness standard, noting that under the Sixth Amendment, a defendant can only waive a right to counsel if the waiver is knowing, intelligent, and voluntary. A determination of these factors is to be made on the basis of the particular facts and circumstances in the case (*Edwards v. Arizona*, 451 U.S. 477 (1981)). Following *Godinez v. Moran*, a trial court is obligated to conduct a two-part inquiry into the validity of a waiver. The first inquiry, concerning competence to plead guilty or waive a right, is determined in an issue-specific manner, using the same competence standard as is used for competence to stand trial. The second inquiry

concerns a determination of whether a defendant's waiver of rights is knowing and voluntary. The Supreme Court entrusted the trial court judge with the sole duty to perform a "penetrating and comprehensive examination" into this matter (*Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948)). *Godinez* points to a heightened standard for entering a guilty plea or waiving a right. However, this does not entail a higher standard of competence, as per *Godinez*, "a criminal defendant's ability to represent himself has no bearing upon his competence to choose self-representation" (*Godinez*, p 400; emphasis in the original). The appeals court also referenced *United States v. Smith*, 413 F.3d 1253 (10th Cir. 2005), which asserts that a defendant's competence to waive the right to counsel is not necessarily associated with the competence to represent oneself at trial.

The trial court found that Mr. Maynard was aware of his charges, possible penalties, and the implications of waiving his right to counsel. The OCCA held that he voluntarily waived his right to counsel, as the waiver was competent, knowing, and intelligent, and thus was not contrary to established Supreme Court precedent. Furthermore, despite the defendant's history of mental illness and apparent unrealistic view of his case and possible defenses, as this concern is disconnected from competence to stand trial, there is no *per se* rule prohibiting such persons from waiving counsel. Indicating that it might have reached a different decision under the same circumstances, the appeals court nevertheless affirmed that the OCCA's ruling was consistent with established Supreme Court standards and not objectively unreasonable.

Discussion

This case adopts the view that a retrospective hearing on competence, even years later, does not violate constitutional rights. It also outlines the parameters of what might constitute an unreasonable decision by a court regarding competency. *Maynard* asserts that while clinical opinions regarding competence to stand trial may come into conflict with legal determinants, the trier of fact is in no way compelled to accept mental health professionals' expert opinions on the matter. Mr. Maynard's waiver of counsel in the hearing transcript, as quoted in the dissenting opinion, portrays a marginally cognitively functional defendant whose comprehension of the unfolding events is marked by significant confusion and para-

noid ideas. These factors could reasonably raise significant questions regarding Mr. Maynard's capacity to pursue his legal case, but notably did not spur an inquiry into his competency. Furthermore, the presiding judge relied on a uniquely legal lens to find Mr. Maynard competent to waive his rights, seemingly afforded little attention to his presenting cognitive and psychiatric difficulties, and apparently based his decision squarely on the defendant's factual understanding of the implications of proceeding *pro se*. Had a clinician been requested to opine in this case, it would probably have been difficult to overlook Mr. Maynard's apparent significantly compromised mental status. However, the court of appeals upheld this ruling, relying on an arguably low legal standard of reasonableness.

Prisoner's Rights and Deliberate Indifference

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The Right to Have Medical Needs Treated Without Deliberate Indifference Does Not Encompass a Right to a Correct Assessment of Suicide Risk

In *Perez v. Oakland County*, 466 F.3d 416 (6th Cir. 2006), the U.S. Court of Appeals for the Sixth Circuit affirmed the decision of the United States District Court for the Eastern District of Michigan. The lower court had granted summary judgment in favor of the defendant, a jail caseworker, and a county, in plaintiff's 42 U.S.C.S. § 1983 action alleging a violation of his son's Eighth Amendment rights by failure to provide appropriate mental health treatment and suicide monitoring leading to the son's suicide while incarcerated in the Oakland County jail.

Facts of the Case

Ariel Perez, Jr., an 18-year-old man at the time of his death, did not complete high school, and was