

SUPREME COURT OF OHIO

State v. Were

94 Ohio St. 3d 173 (Ohio 2002) · Decided February 6, 2002

OPINION

State v. Were 94 Ohio St. 3d 173

SWEENEY, J.

Francis E. Sweeney, Sr., J. In April 1993, inmates rioted at the Southern Ohio Correctional Facility in Lucasville, Ohio. During the upheaval, groups of inmates overpowered prison guards and held authorities at bay for several days. Before control was regained at the maximum security facility, several inmates and one guard were murdered. In this death-penalty case, defendant-appellant, James Were, was tried and found guilty of the murder of the prison guard, Robert Vallandingham.¹ Upon appeal, the court of appeals affirmed. This cause is now before the court upon an appeal as of right from the court of appeals. Appellant raises thirty-one propositions of law for our consideration. However, because we find merit in appellant's claim in one of those propositions that the court committed reversible error, we do not reach the other issues. In proposition' VIII, appellant asserts that he was deprived of a fair trial because the trial court failed to conduct a competency hearing as repeatedly requested by trial *174counsel. We find this argument meritorious. Accordingly, we overturn his convictions and death sentence and reverse and remand for a new trial. Fundamental to our adversarial system of justice is the due process right of a criminal defendant who is legally incompetent not to be subjected to trial. *State v. Berry* (1995), 72 Ohio St.3d 354, 359, 650 N.E.2d 433, 438, citing *Pate v. Robinson* (1966), 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815, and *Drope v. Missouri* (1975), 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103. In *Dusky v. United States* (1960), 362 U.S. 402, 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824, 825, the United States Supreme Court defined the test for competence to stand trial as 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,’ ” quoting the brief of the United States Solicitor General. In R.C. 2945.37, the General Assembly codified the criminal defendant's right to a competency hearing and set forth the test to determine competency. At the time of Were's trial, this statute provided: “(A) In a criminal action in a court of common pleas or municipal court, the court, prosecutor, or defense may raise the issue of the defendant's competence to stand trial. If the issue is raised before trial, the court shall hold a hearing on the issue as provided in this section. * * * “A defendant is presumed competent to stand trial, unless it is proved by a preponderance of the evidence in a hearing under this section that because of his present mental condition he is incapable of understanding the nature and objective of the proceedings against him or of presently

assisting in his defense.” (Emphasis added.) 142 Ohio Laws, Part I, 755-756. Thus, under former R.C. 2945.37(A), a trial court must hold a competency hearing if a request is made before trial. (Substantially the same requirement is now in subsection [B].) Our cases have underscored that requirement. See *State v. Hessler* (2000), 90 Ohio St.3d 108, 124, 734 N.E.2d 1237, 1253; *State v. Bock* (1986), 28 Ohio St.3d 108, 109, 28 OBR 207, 209, 502 N.E.2d 1016, 1018. Defense counsel filed a pretrial motion requesting a competency hearing on March 27, 1995. Although the trial court ordered a competency evaluation, the requested hearing was not held or waived. Instead, on August 23, 1995, the trial court issued a journal entry that determined competency without a hearing: “The court finds that the Shawnee Forensic Center attempted to conduct a competency examination of the defendant as ordered by the court. The court finds that the defendant refused to speak with the examiners in a face to face confrontation with the defendant ordered by the court. A copy of this report is attached. The examiners concluded based on their information that defendant *175 was intentionally refusing to cooperate as part of a deliberate ploy on his part to disrupt these legal proceedings. It was their further opinion that defendant is competent and is capable of understanding the nature and objective of the proceedings and assisting in his defense. “The court finds defendant is competent to stand trial and these proceedings should continue as scheduled.” Thus, based on the examiners’ report, the trial court concluded that appellant was competent. Since appellant refused to meet with the examiners, this determination was made without the benefit of a psychiatric evaluation. Also, the court’s decision was made without a defense stipulation to the report or a hearing on the matter. We find this to be error. The issue was raised prior to trial; thus, in accordance with the express language of the statute, the trial court was required to hold a competency hearing. Accordingly, we find that the trial court did not satisfy the requirement of a hearing in former R.C. 2945.37(A). Moreover, the record supports a further finding that the failure to hold a competency hearing was a constitutional violation. In *Berry*, supra, we stated, “The right to a hearing on the issue of competency rises to the level of a constitutional guarantee where the record contains ‘sufficient indicia of incompetence,’ such that an inquiry into the defendant’s competency is necessary to ensure the defendant’s right to a fair trial.” *Berry*, 72 Ohio St.3d at 359, 650 N.E.2d at 438, quoting *Drope v. Missouri* (1975), 420 U.S. 162, 175, 95 S.Ct. 896, 905, 43 L.Ed.2d 103, 115. We hold that an evidentiary competency hearing is constitutionally required whenever there are sufficient indicia of incompetency to call into doubt defendant’s competency to stand trial. (*State v. Berry* [1995], 72 Ohio St.3d 354, 650 N.E.2d 433, followed.) Here, the record is replete with suggestions of appellant’s incompetency. Defense counsel directly raised the issue and asked for a competency hearing on several occasions: (1) in the previously mentioned pretrial motion, (2) after opening arguments, (3) during the trial, and (4) before the mitigation phase began. While defense counsel was afforded the opportunity to offer reasons in support of their request for a competency hearing at these various points, they were never afforded an evidentiary hearing. Also, on many occasions, defense counsel directly or indirectly represented to the court that they believed appellant to be incompetent. For

instance, at a status conference held on July 18, 1995, defense counsel John Mackey stated that he had served for the past eight years as a part-time referee in probate court handling civil commitments. Based on this experience, he believed that appellant exhibited signs of paranoia and harbored suspicion against the defense team that, in counsel's view, could not be overcome. *176 Additionally, defense counsel filed two separate motions to withdraw and a motion for a continuance. As grounds for these motions, counsel cited appellant's bizarre belief that counsel was taping confidential conversations and turning the tapes over to the state. Counsel also cited appellant's refusal to speak with them or any member of the defense team and his refusal to accept their correspondence. Counsel consistently claimed that appellant's failure to cooperate seriously hampered their ability to present a defense. Appellant's own letters and statements to the court suggest that appellant's paranoia centered on defense counsel. In addition to other pro se filings, appellant filed six pro se motions to dismiss his attorneys. He stated that his attorneys were racially biased, had threatened his life, were conspiring with the prosecution, and had failed to adequately prepare for the mitigation phase. The last argument ignored his refusal to speak with the mitigation specialist. The state admits that an evidentiary hearing on competency was not held. However, the state relies on *Bock*, supra, 28 Ohio St.3d 108, 28 OBR 207, 502 N.E.2d 1016, where this court found that the failure to hold a competency hearing was harmless error. We find that the state's reliance on *Bock* is misplaced. The facts in *Bock* are far different from those present in this case. In *Bock*, the court found harmless error in the trial court's failure to conduct a competency hearing in part because the defendant testified in his own defense and was subject to cross-examination, and the record failed to reveal sufficient indicia of incompetency. In addition, the court noted, "Defense counsel, after the original motion for a hearing, failed ever again to mention the defendant's competency until the time for appeal." *Id.*, 28 Ohio St.3d at 111, 28 OBR at 210, 502 N.E.2d at 1019. Here, defense counsel continually raised the issue of appellant's competency. Also, unlike the defendant in *Bock*, appellant never testified during the guilt phase, and his unsworn statement offered during mitigation was not subject to cross-examination. Nor can it be said that the record here lacks sufficient indicia of appellant's incompetency. In addition to defense counsel's repeated allegations, the many pro se motions filed by appellant clearly cast doubt on appellant's competency. The court of appeals found that appellant's "intransigence" was to blame for the trial court's failure to hold the statutorily mandated hearing. However, the appellate court does not explain how appellant's refusal to speak with appointed mental health experts prevented the judge from conducting a hearing. Even without an interview, experts could have reviewed counsel's problems and the many letters and motions written by appellant. In addition, appellant could have been moved to a mental facility in order to be observed as requested by defense counsel. Moreover, the record does not support the lower court's conclusion that *177 appellant was engaged in a "calculated effort to avoid prosecution by delaying the progress of the trial." In fact, the contrary may be true in light of appellant's stated desire to be brought to trial earlier. Understandably, appellant's intransigence and lack of cooperation were

frustrating to the trial court. However, “[c]ommon sense dictates that no defendant can make a record of lack of competency absent the findings and hearings contemplated by R.C. 2945.37 and 2945.371.” Bock, 28 Ohio St.3d at 113, 28 OBR at 212, 502 N.E.2d at 1021 (Wright, J., dissenting). Based on these facts, we conclude that the trial court violated appellant’s constitutional and statutory right to a competency hearing. We find appellant’s proposition VIH to be well taken. Accordingly, we vacate appellant’s convictions and sentence, reverse the judgment, and remand for a new trial. Judgment reversed and cause remanded. Moyer, C.J., Douglas, Pfeifer and Lundberg Stratton, JJ., concur. Resnick, J., dissents. Cook, J., dissents. . Although appellant was also tried for the murder of inmate Brace Harris, the jury acquitted him of those charges.