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NO. 966532

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Petitioner,

v.

MATTHEW SEAN MCCARTHY,
Respondent.

ANSWER TO STATE'S PETITION FOR REVIEW

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I. RESPONDENT'S IDENTITY

Matthew Sean McCarthy (Mr. McCarthy) is the respondent in this matter. I, Tanesha La'Trelle Canzater, represented Mr. McCarthy on appeal before Division Three Court of Appeals (Division Three), and I represent him here.

II. COURT OF APPEALS' DECISION

The State of Washington (State) petitions this Court to review State v. Matthew Sean McCarthy/ Personal Restraint of McCarthy, 429 P.3d 1086 (Wash. Ct. App. 2018), https://www.courts.wa.gov/opinions/pdf/348598_pub.pdf. The decision was published on November 15, 2018 and vacates Mr. McCarthy's conviction for first-degree burglary and his life sentence.

The State has already filed a copy of the decision with this Court. However, to comply with the rules of appellate procedures, or RAP. I have attached another copy here.

III. ANSWERS TO ISSUES PRESENTED

1. When fundamental constitutional rights are at issue, Division Three is required to make an independent examination of the record to determine whether those rights have been denied.

2. Division Three's decision is well rooted in evidence presented in the record.

3. Washington law should incorporate California's procedures and standards governing further questions of competency.

IV. STATEMENT OF THE CASE

For purposes here, we adopt the facts Division Three relied on to base its decision in State v. McCarthy.

V. RESPONDENT’S REACTIONS TO THE STATE’S REASONS FOR WHY REVIEW SHOULD BE ACCEPTED

The criteria for which this court will accept review are constrained by the very specific and limited circumstances described in RAP 13.4(b). This Court will only grant a petitioner’s request for review if the court of appeals’ decision conflicts with a decision of this court or with another court of appeals’ decision; involves a significant question of law under the Constitution of the State of Washington or of the United States; or involves an issue of substantial public interest. RAP 13.4(b)(1)-(4).

The State insists “discretionary review is appropriate under RAP 13.4(b)(1) and (4),” because State v. Matthew Sean McCarthy, 429 P.3d 1086 (Wash. Ct. App. 2018) conflicts with this Court’s decisions in State v. Coley, 180 Wn.2d 543, 326 P.3d 702 (2014); State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985) (Ortiz I); State v. Ortiz, 119 Wn.2d 294, 831 P.2d 1060 (1992) (Ortiz II); and State v. Tate, 74 Wn.2d 261, 444 P.2d 150 (1968). And, it creates new procedures and standards that address questions on a criminal defendants’ competency. State’s Pet. Rev. 7-8.

We believe State v. McCarthy reinforces the responsibility our legislature has entrusted trial courts under RCW 10.77.060 to ensure mentally ill defendants are not erroneously found competent to stand trial. For that reason, we generally agree review should be accepted.

DEFERENCE TO TRIAL COURT

The State maintains Division Three afforded no deference to the trial court because the specific judge who found Mr. McCarthy competent to stand trial, despite evidence of Mr. McCarthy deteriorating mental health, was not the same judge that

presided over the competency trial. State's Pet. Rev. 8. According to State, Division Three reviewed the record and substituted its own finding that Mr. McCarthy's mental health had substantially deteriorated since the competency trial instead of reviewing the trial court's decision for an abuse of discretion. And, that determination conflicts with this Court's decisions in Coley, Ortiz I, and Ortiz II.

When fundamental constitutional rights are at issue, like the right to due process here, Division Three is not bound to review the record for an abuse of discretion. Instead, it is *required* (emphasis added) to make an independent examination of the record to determine whether such rights have been denied. U.S. Const. amend. XIV; Haynes v. Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963); State v. Hoffman, 64 Wn.2d 445, 392 P.2d 237 (1964).

PRESUMPTION OF COMPETENCE

The State asks this Court to assume for the sake of argument Division Three is correct the trial court should have revisited the issue of competence. But, the remedy ordered conflicts with established precedent. The State criticizes Division Three's decision to vacate Mr. McCarthy's conviction because it effectively presumes he was incompetent at trial, which conflicts with the well-established presumption that a criminal defendant is competent. State's Pet. Rev. 8-9.

"Competence to stand trial is the most significant mental health inquiry pursued in the system of criminal law." See Stone A: Mental health and the law: a system in transition. Rockville, MD: National Institute of Mental Health, 1975. It is a fundamental principle of state and federal law that incompetent defendants may not stand trial. State v. Coley, 180 Wn. 2d 543, 551, 326 P.3d 702, 706 (2014). This right is protected by the

due process clause of the Fourteenth Amendment. See U.S. Const. amend. XIV. The law attempts to balance the liberty interests and due process concerns of a defendant who has not been convicted of a crime with the state's interest in a fair and accurate adjudication of criminal cases. See Kathleen Powers and Martin O. Sellom: Assessment of Competence to Stand Trial, 15 April 2003.

McCarthy highlights the fact that although a defendant may seem competent at one point during trial, the presumption of competence must be overcome whenever, in light of the defendant's history, there is bona fide evidence to the contrary. Given that, "a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." Drope v. Missouri, 420 U.S. 162 (1975).

Here, Mr. McCarthy was convicted and sentenced to life in prison without the possibility for parole, after the trial court essentially ignored evidence or instances that should have triggered the need to suspend trial proceedings so that Mr. McCarthy could undergo another mental health evaluation. Div. III Opinion 10. Vacating Mr. McCarthy's conviction is the only appropriate remedy Division Three could have imposed under these circumstances.

PUBLIC INTEREST

Finally, the State argues this matter involves an issue of substantial public interest that this Court should review under RAP 13.4(b)(4). State's Pet. Rev. 9-10. We agree.

State v. McCarthy offers a solution to the rather problematic relationship between our court system, as it is, and mentally ill offenders, which could not have come at more urgent time. Research shows our country is experiencing a mental health crisis, where

the mentally ill are more likely to encounter police than get medical help. As a result, some 2 million people with mental illness are booked into jails each year. On a national level, nearly 15% of men and 30% of women booked into jails have a serious mental health condition. *See* National Alliance on Mental Health: Jailing People with Mental Illness, <https://www.nami.org/learn-more/public-policy/jailing-people-with-mental-illness>. The data for our state is as compelling.

VI. CONCLUSION

For reasons we argue above, we ask this Court to consider our reactions to the State's petition for review.

Respectfully submitted this 18^h day of January, 2019.

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DECLARATION OF SERVICE

January 18, 2019

Case Name: **State of Washington v. Matthew Sean McCarthy**

Supreme Court Case Number: 966532

I declare under penalty and perjury of Washington State laws that on January 18, 2019, I filed this **ANSWER TO STATE'S PETITION FOR REVIEW** with this Court and served copies to:

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