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SUPREME COURT NO. 98762-9

COA NO. 79226-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RAMON SAUL SILVA, JR.,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Judges
John H. Chun, Barbara Linde, Sean P. O'Donnell,
Mary E. Roberts, Julie Spector, and Sandra Widlan

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Ramon Saul Silva, Jr. asks this Court to grant review of the court of appeals' unpublished decision in State v. Silva, *slip op.* 79226-1-I, filed April 20, 2020 (Appendix A), and subsequent order denying Silva's motion for reconsideration (Appendix B).

B. ISSUES PRESENTED FOR REVIEW

Roman Silva believed his girlfriend was unfaithful. And that her eyes were recording him. And that she communicated with the CIA via portals. He was charged with assault for allegedly compressing her airway and poking her in the eye.

At a disjointed pre-trial hearing before two separate judges, the State and Silva repeatedly raised the issue of competence to stand trial, pointing to the police reports and Silva's current housing in a jail psychiatric ward. Both judges not only ignored these concerns, but actively prohibited any inquiry, and instead addressed and granted Silva's motion to proceed *pro se*. His defense attorney—appointed just that morning—made no objection.

Testimony at trial and Silva's later comments at sentencing corroborated that although Silva displayed an advanced intellect and ability to interact with reality, he had Schizophrenia, was disassociated from reality, and struggled to determine what was real and what was not.

By refusing to consider meaningfully the issue of competency throughout pre-trial, trial, and much of sentencing, despite obvious indicators and open concern stated on the record by the prosecutor, the trial court violated Silva's constitutional rights. Moreover, in focusing on Silva's intellect, rather than ability to comprehend the nature of the proceedings, the trial court misapplied the relevant legal standards and ignored procedural mandates when it granted his request to proceed *pro se*. This Court should accept review to clarify the appropriate procedure and legal standards for competency, particularly where issues of competency and *pro se* status arise simultaneously.

This case presents the following substantive questions for review:

1. After the State raised a concern about Silva's competency, did the trial court then err by failing to order an evaluation and refusing to consider competency meaningfully?
2. Did the trial court err in hearing and granting Silva's motion to proceed *pro se* and in finding his waiver of counsel "knowing, intelligent, and voluntary," before making an ill-informed determination as to Silva's competency?
3. In considering Silva's *pro se* request, did the trial court make a factual err in concluding there was "no reason" to think Silva was not

competent despite the prosecutor's request and the probable cause statement available to the court?

4. Similarly, did the trial court make a procedural error by noting Silva was "coming across as competent" despite the court's previous denial of the opportunity for the parties to discuss competency?

5. Did the trial court make a legal error by misapplying the appropriate legal standard by finding Silva's intellect sufficient without considering his ability to comprehend the nature of the proceedings?

6. Did defense counsel violate Silva's right to effective assistance of counsel by failing to object to the trial court's consideration of the motion to proceed *pro se* and asserting he believed the waiver of counsel was "knowing and intelligent" without any competency evaluation or meaningful hearing on the matter?

7. Did the trial court further compound the error by failing to order a competency evaluation or hearing after the following occurred? ... after Silva asked whether he had woken up, and twice raised competency concerns during the hearing on the motion to proceed *pro se*? ... after trial witnesses raised concerns about Silva's mental health and ability to maintain a grasp on reality? ... after Silva ranted during sentencing that he knew he was in a "simulation," the judge was "shimmering," and he knew this was not reality?

This Petition presents the following issues for review:

1. Is this Court's review warranted under RAP 13.4(b)(3) because this case presents a "significant question" of constitutional law under the due process clauses of both the Fourteenth Amendment to the U.S. Constitution and article 1, section 3 of the Washington Constitution, involving the legal and procedural standards relevant to the right to be competent to stand trial?

In addition, is review warranted under RAP 13.4(b)(1) and (2) because the court of appeals' opinion conflicts with established Washington Supreme Court jurisprudence interpreting these constitutional rights?

2. Is this Court's review warranted under RAP 13.4(b)(3) because this case presents a "significant question" of constitutional law under the Sixth Amendment to the U.S. Constitution and article I, section 22 of the Washington Constitution, involving the right to effective assistance of counsel?

In addition, is review warranted under RAP 13.4(b)(1) and (2) because the court of appeals' opinion conflicts with established Washington Supreme Court jurisprudence interpreting these constitutional rights?

3. Is this Court's review warranted under RAP 13.4(b)(4) because it presents questions of "substantial public interest," specifically:

Whether a trial court may move forward to consider a motion to waive counsel while the issue of competency remains unaddressed in any meaningful way?

Whether a trial court may substitute an analysis of a defendant's intellectual presentation for either a competency hearing or meaningful discussion of competency on the record?

C. STATEMENT OF THE CASE

The King County Prosecutor's Office charged Silva with second-degree domestic violence (DV) assault by strangulation and fourth-degree DV assault. CP 1. After a bench trial, Silva was found guilty of both counts. CP 22.

Prior to trial, the court was provided with a copy of the statement of probable cause. This document detailed police officer observations that Silva was "delusional" and "an obvious mental health crisis" at the time of his arrest. CP 6.

During a pre-trial hearing primarily held to address Silva's motion to proceed *pro se*, the prosecutor raised concerns about Silva's competency, and even pointed to the statement of probable cause. RP 15. The trial court dismissed this concern as irrelevant to the issue at hand and did not address it further. RP 15. Silva attempted to re-raise the issue of competency twice by asking if he had heard something about competency from the prosecutor

or the court, but the trial court actively shut the inquiry down, stating “I’m not here to discuss competency.” RP 21-22. After appearing to determine Silva could represent himself, the first judge stepped off the bench and was replaced by a second judge. RP 18-20.

Silva responded to this change with confusion – regarding whether he had already been granted *pro se* status – and also by commenting, “I’m just making sure I didn’t wake up.” RP 23 (quote), 23-26 (confusion). The second judge stated they would “start over.” RP 26. However, when Silva then attempted to re-raise the issue of competency again before this second judge, the court again declined to address the issue. RP 34-35. During this second half of the hearing, Silva also informed the trial court he was being held in the psychiatric ward of the jail. RP 34.

Despite all these indicators, and more to follow during the trial and sentencing, the trial court never held a competency hearing. Notably, during trial, Officer Obregon testified that he had significant training and experience working with mentally ill individuals, including degrees in psychology and therapy, and eleven years working as a psychologist prior to joining law enforcement. RP 242. Obregon had responded to the alleged incident, and based on his observations, noted a concern that Silva’s particular brand of mental health issue involved “disassociation,” meaning Silva could go in and out of lucidity, or even interact with reality, but was

unable to determine whether his own experiences and perceptions were real. RP 254, 258-59.

During sentencing, Silva initially refused to speak, then ranted that the proceedings were “fake” and a “simulation,” and the court was “shimmering.” RP 298, 309, 312. The proceedings were stayed while new counsel was appointed, and then proceeded with an attorney who had been appointed just that morning who did not raise the issue of competency. RP 319-21.

Silva timely appealed and assigned error to the trial court’s failure to address meaningfully the issue of his competency prior to trial and prior to permitting him to proceed *pro se*. Br. App. at 2-3. Silva also raised a claim of ineffective assistance of counsel for his initial trial attorney’s failure to pursue the issue of competency at the pre-trial hearing, even after it had been raised by the prosecutor. Br. App. at 27-29. In an unpublished opinion dated April 20, 2020, the court of appeals found no error and upheld Silva’s convictions. Silva, *slip op.* at 1 (App. A); see also Order Denying Motion for Reconsideration (App. B).

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

THIS COURT’S REVIEW IS WARRANTED TO CLARIFY THE CORRECT LEGAL STANDARD AND PROCEDURAL REQUIREMENTS FOR COMPETENCY, PARTICULARLY IN THE CONTEXT OF A REQUEST TO PROCEED *PRO SE*.

1. This case presents multiple significant questions of federal and state constitutional law under RAP 13.4(b)(3), and conflicts with established jurisprudence interpreting these rights under RAP 13.4(b)(1) and (2).

The decisions by the trial court and defense counsel's failure to object, raise several state and federal constitutional issues including the right to competency to stand trial, the right to due process, and the right to effective assistance of counsel.

A person accused of a crime has a fundamental right to be competent to stand trial. State v. Heddrick, 166 Wn.2d 898, 904, 215 P.3d 201 (2009). This right is premised on both the federal constitution and Washington law.

The Due Process Clause of the Fourteenth Amendment "prohibits the conviction of a person who is not competent to stand trial." In re Personal Restraint of Fleming, 142 Wn.2d 853, 861, 16 P.3d 610 (2001) (citing Drope v. Missouri, 420 U.S. 162, 171, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975); Pate v. Robinson, 383 U.S. 375, 378, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966)); U.S. CONST., AMEND. XIV. Washington law provides "greater protection" than federal law by specifying "[n]o incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues." Fleming, 142 Wn.2d at 862; RCW 10.77.050.

The purpose of the competency requirement is “to ensure that [a defendant] has the capacity to understand the proceedings and to assist counsel.” Godinez v. Moran, 509 U.S. 389, 402, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993).

To be considered competent under the federal standard, an accused must have ““sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ ” and to assist in his defense with ““a rational as well as factual understanding of the proceedings against him.””” Fleming, 142 Wn.2d at 861-62 (quoting Dusky v. United States, 362 U.S. 402, 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) (quoting Solicitor General Rankin for the U.S.)).

Similarly, under the Washington standard, an accused is legally competent to stand trial if he (1) “understands the nature of the charges;” and (2) “is capable of assisting in his defense.” Fleming, 142 Wn.2d at 862 (citing State v. Hahn, 106 Wn.2d 885, 894, 726 P.2d 25 (1986); State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985)); RCW 10.77.010(15); State v. Ortiz-Abrego, 187 Wn.2d 394, 403, 387 P.3d 638 (2017). This two-part test is also the standard for competency to waive the right to counsel. Fleming, 142 Wn.2d at 862 (citing Godinez, 509 U.S. at 399).

“[T]he task of the trial judge is not to measure overall mental capability but rather the specific mental capacity required to understand a

trial.” Ortiz-Abrego, 187 Wn.2d at 410. In essence, the defendant must have the “ability to make necessary decisions at trial.” Id. (quoting State v. Jones, 99 Wn.2d 735, 746, 664 P.2d 1216 (1983)).

Here, where Silva lacked a fundamental understanding that the proceedings he found himself in were real, the trial court’s decision to proceed to trial implicates both the federal and state competency standards.

Washington law also imposes requirements on when a trial court must order a competency evaluation. RCW 10.77.060(1)(a) provides, in relevant part:

Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

(emphasis added).

These statutory procedural requirements are mandatory, not merely directory. Heddrick, 166 Wn.2d at 904, 906. Where there “is reason to doubt a defendant’s competency” the statute “requires the trial court to order” a competency evaluation by a qualified expert. State v. Sisouvanh, 175 Wn.2d 607, 620-21, 290 P.3d 942 (2012) (emphasis added); State v. DeClue, 157 Wn. App. 787, 792, 239 P.3d 377 (2010) (recognizing a formal competency hearing is required under RCW 10.77.060 whenever a

legitimate question of competency arises). ““The failure to observe procedures adequate to protect this right is a denial of due process.”” Heddrick, 166 Wn.2d at 904 (quoting State v. O’Neal, 23 Wn. App. 899, 902, 600 P.2d 570 (1979)); U.S. CONST., AMEND. XIV; WASH. CONST., ART. 1, § 3.

Here, the trial court’s refusal to order a competency evaluation or to even permit the parties to discuss competency during the hearing despite these mandatory statutory requirements, implicates both federal and state constitutional due process.

In addition, as an accused facing criminal charges, Silva had a federal and State constitutional right to not only counsel, but also effective assistance of counsel. U.S. CONST., AMEND. VI; WASH. CONST., ART. 1, § 22; State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987); Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Fleming, 142 Wn.2d at 865.

Defense counsel’s cursory remark that Silva’s waiver of counsel was knowing and intelligent, and counsel’s failure to address the issue of competency, or object when the trial court announced it would first address the waiver of counsel—these actions also violated Silva’s state and federal constitutional right to effective assistance of counsel.

In summary, the trial court's error was four-fold. First, the refusal to engage in meaningful consideration of the issue of competency once raised is a violation of Silva's federal and state right to be competent to stand trial. Second, the procedural failure to follow mandatory statutory requirements to order a competency evaluation, and the failure to do so prior to addressing Silva's motion to *pro se*, both result in state and federal due process violations. Third, the failure to apply the correct legal standard violates Silva's state and federal rights to be competent to stand trial. Fourth, where the trial court misapplied the legal standard in the context of granting a motion to proceed *pro se*, both the trial court and defense counsel's actions violated Silva's state and federal right to be represented by counsel.

By finding no error by the trial court (or by trial counsel), the Court of Appeals' opinion also conflicts with the published body of federal and state jurisprudence cited above which interprets the constitutional rights, legal standards, and procedural requirements of both competency and the right to counsel.

For the reasons discussed above, this Court should accept review of Silva's case under RAP 13.4(b)(3), as well as RAP 13.4(b)(1) and (2).

2. This case presents an issue of substantial public interest under RAP 13.4(b)(4).

This case creates a compelling issue of substantial public interest because the court of appeals' reasoning exhibits a flawed understanding of both the substantive legal standards and the procedural requirements applicable when competency is raised, particularly in the context of a motion to proceed *pro se*.

It is not uncommon for individuals with competency issues to lack insight into their own competency. Thus there is a reasonable probability that these two issues—competency and a motion to proceed *pro se*—will arise simultaneously in many cases in Washington courts. This is particularly true given the widespread prevalence of untreated mental health issues in modern society.

Mr. Silva's present circumstances illustrate this point. He has advised counsel that after being sentenced in the present appeal, the State brought two additional charges under different case numbers. Although he was initially granted *pro se* status in one case, that status was revoked after he was found not competent in the other. Pursuant to that order, Silva is presently housed in a State psychiatric hospital undergoing competency restoration treatment.

Thus, these issues are arising again in Silva's additional cases, and are likely to arise in the cases of other Washingtonians. Trial courts and parties would benefit from clarity regarding the correct legal standards and procedures to apply.

As it stands, under the unpublished reasoning of the court of appeals, it is permissible for a trial court to address a motion to proceed *pro se* despite the issue of competency to stand trial remaining outstanding. Under this reasoning, it is equally permissible for a court to evaluate a defendant and, on the basis of his high intellect, pronounce him competent without permitting further inquiry into whether he understands the nature of the proceedings. Finally, this reasoning permits a trial court to ignore numerous signs of incompetency and ignore the repeated requests of the parties to address competency at a hearing. This reasoning should be corrected.

This Court should accept review under RAP 13.4(b)(4), to clarify the following: (a) competency requires a defendant to understand that the courtroom proceedings are real; intellect alone is insufficient, (b) once competency concerns are raised by the parties, the trial court must at a minimum permit the parties to be heard and must meaningfully address the issue, and (c) a motion to proceed *pro se* cannot be addressed prior to such meaningful consideration of an outstanding issue of competency. This Court should accept review to ensure that important rights involving both

competency and effective assistance counsel are upheld for all Washingtonians, including those with mental health concerns facing criminal charges.

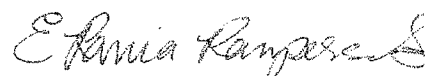
E. CONCLUSION

For the aforementioned reasons, Silva respectfully asks this Court to grant review under RAP 13.4(b)(1), (2), (3), and (4).

DATED this 3rd day of August, 2020.

Respectfully submitted,

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Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 79226-1-I
)	
Respondent,)	
)	DIVISION ONE
v.)	
)	
RAMON SAUL SILVA,)	UNPUBLISHED OPINION
)	
Appellant.)	
_____)	

MANN, C.J. — Ramon Silva appeals his convictions for second degree domestic violence (DV) assault and fourth degree DV assault. Silva contends that the court erred by not sua sponte requiring him to undergo a competency evaluation, and that his counsel was ineffective by not raising Silva’s competency with the court. We disagree and affirm.

I.

Silva was arrested and charged with second degree DV assault, and fourth degree DV assault. According to the charging documents, the second degree assault charge arose from an incident on January 2, 2018, when Silva accused his live-in girlfriend, Victoria Martinez, of cheating on him. Martinez stated that Silva bent her fingers and strangled her. The fourth degree assault charge arose from an incident on

Citations and pin cites are based on the Westlaw online version of the cited material.

February 18, 2018, when Silva woke Martinez up and told her that he was having a mental breakdown. Martinez called 911 and reported that Silva had strangled her, and poked her in the eye after ranting, making no sense, and instructing her “don’t look at me with those eyes.” King County Sherriff Officers Tim MacDonald and Nathan Obregon responded. Martinez reported to the officers that Silva is schizophrenic, but he was not taking his medication and he was using marijuana, which aggravated his delusions. Martinez reported that Silva was talking about aliens and mind control. Deputy MacDonald observed Silva speaking about these issues and having an “obvious” mental health crisis.

On August 1, 2018, Silva’s appointed counsel moved to withdraw due to a conflict of interest that arose after the State disclosed its list of possible witnesses. Counsel also informed the trial court that Silva wished to proceed pro se. The trial court granted defense counsel’s motion to withdraw, and denied Silva’s motion without prejudice, stating that it wanted to give Silva the opportunity to discuss representing himself with a new counsel.

On August 3, 2018, Silva appeared in front of a new trial court judge for a hearing on his motion to proceed pro se. A new public defender was assigned to Silva that morning. Counsel moved to continue the trial and confirmed that Silva wished to proceed pro se. The court asked Silva whether he previously represented himself and whether he had studied law. Silva responded that he had studied law as an inmate. He stated he was familiar with the rules of evidence and jury instructions, and that he was planning to waive a jury trial and proceed to a bench trial. The prosecutor raised a concern about whether Silva could “constitutionally proceed based on mental capacity.”

The court responded “you can be incompetent and proceed pro se. There’s U.S. Supreme Court law on that . . . So I’m going to let him proceed pro se. He wants to represent himself, he’s entitled to do that.” After a break in proceedings, Silva asked for standby counsel, which the court denied. Silva then asked the court if the prosecutor had raised a competency issue. The court responded, “I’m not here to discuss competency. We’re just talking about you proceeding representing yourself.”

The hearing resumed later that same day with another new trial court judge presiding. Silva remarked on the change of judge, saying “I’m just making sure I didn’t wake up.” Due to the confusion of where the prior judge had left off, the new judge restarted the proceedings from the beginning. When the court asked why Silva thought he could represent himself, Silva responded “I have a good understanding of the Criminal Rules and Procedure and with pro se status, I’ll be able to utilize the WestLaw Legal Research station in the jail.” He confirmed that even though he wanted standby counsel, he would still opt to proceed pro se if he was not granted standby counsel. After questioning Silva further about his knowledge of the legal system, the court found that he was making a knowing, intelligent, and voluntary waiver of his right to counsel. The court found that because there was no reason to doubt Silva’s competency, the court would allow him to represent himself.

Silva then stated:

I would just like to mention for the record that I’m being held in a psychiatric ward past the 72-hour observation period and nobody has spoken to me or anything. And earlier with the other Judge that was up here, the Prosecutor mentioned something about incompetency and when I brought it up, nobody wanted to speak about it.

So I don’t know what you can do about this, but this jail has me being—they’re violating RCW 10.99 by even holding me past the 72-hour observation period without any type of anything. They haven’t come

spoken to me, they don't do anything. They haven't—they're not even feeding me food or giving me showers.

The court responded "so if you have issues about what's going on in the jail, that is not something I can address." The court then signed Silva's waiver of counsel.

Although Silva initially stated an intention to plead guilty, on October 5, 2018, he indicated that he wanted to proceed to a bench trial. Trial began on October 17, 2018. The State presented trial testimony from Martinez, the responding Deputies MacDonald and Obregon, and Detective Eric White. The State also offered the 911 calls made by Silva and Martinez during the February 18 incident. Silva did not present evidence in his defense.

MacDonald testified that when he responded to the call, Silva "seemed to be having some sort of a mental health crisis. He was talking about mind control, aliens, people talking to him, and was just very strange." Obregon testified that based on his training as a psychotherapist, he was concerned that Silva might be experiencing disassociation.

Martinez testified that Silva had mental health issues, and that he stopped his treatment and was using marijuana, which made his paranoia worse. She said he frequently talked about CIA agents and being recorded. In the 911 call, Martinez said that Silva was describing himself as having a psychotic break at the time of the incident and that he was constantly talking about being an alien and a reptile.

Silva's defense was to challenge Martinez's credibility and motives. The court found Martinez was a credible witness and that Silva suffered from mental illness. The court found Silva guilty of both charges. At sentencing, Silva was irate and he made death threats, swore, and ranted. He demanded standby counsel before the court

signed the judgment and sentence. At a second sentencing hearing a week later, Silva had appointed standby counsel.

Silva appeals.

II.

Silva argues that the trial court violated his constitutional rights by allowing him to proceed pro se through trial without ordering a competency evaluation sua sponte. We disagree.

The due process clause of the Fourteenth Amendment “prohibits the conviction of a person who is not competent to stand trial.” In re Pers. Restraint of Fleming, 142 Wn.2d 853, 861, 16 P.3d 610 (2001) (citing Drope v. Missouri, 420 U.S. 162, 171, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975)); U.S. Const., Amend. XIV. Washington law provides greater protection than federal law by specifying that “[n]o incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.” Fleming, 142 Wn.2d at 862; RCW 10.77.050. The Washington test for competency is whether (1) the defendant understands the charges against him and (2) the defendant is capable of assisting in his defense. Fleming, 142 Wn.2d at 861.

The trial court has wide discretion in judging the mental capacity of a defendant to stand trial and in deciding whether a competency evaluation should be ordered. Fleming, 142 Wn.2d at 863. RCW 10.77.060 provides that when there is a reason to doubt the defendant’s competency, the court shall move to evaluate the competency of the defendant. The court must make the threshold determination that there is a reason to doubt competency before it is required to evaluate the defendant’s competency. City

of Seattle v. Gordon, 39 Wn. App. 437, 441, 693 P.2d 741 (1985). A reason to doubt the competency of the defendant rests in the discretion in the trial judge. City of Gordon, 39 Wn. App. at 441. When making this determination, the court may consider the “defendant’s appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel.” State v. Ortiz-Abrego, 187 Wn.2d 394, 404, 387 P.3d 638 (2017).

We defer to the trial court's judgment of a defendant’s mental competency on review and will only reverse upon a finding of abuse of discretion. State v. Coley, 180 Wn.2d 543, 551, 326 P.3d 702 (2014).

In Fleming, for example, the defendant had a psychological evaluation that said he was incompetent and unable to cooperate with counsel, but the court was not provided with this evaluation before entering the defendant’s guilty plea. Fleming, 142 Wn.2d at 863. The Supreme Court found that the trial court did not err by not ordering a competency evaluation because there was no irrational behavior or conduct by the defendant to alert the trial court that a competency hearing was necessary. Fleming, 142 Wn.2d at 865. The Court held that the defendant’s potential incompetency affected his ability to enter a guilty plea, and that the defendant’s counsel was ineffective because counsel failed to provide the court with the psychological evaluation. Fleming, 142 Wn.2d at 865-67.

Silva contends that the court abused its discretion because it was confronted with “multiple reasons to doubt Silva’s competency” as raised by the prosecutor, Silva, and the certification of probable cause. Silva argues that the court was first put on notice about his incompetency when the prosecutor stated that she had concerns, and

directed the court to the officer statement in the certification of probable cause—which detailed Silva’s schizophrenia diagnosis, his delusions, his irrational behaviors, and his beliefs. Silva argues that when he asked about a competency issue at the August 3, 2018, hearing about proceeding pro se, the court should have addressed his competency. He contends that defense counsel’s evaluation of competency that day was not reliable because his new counsel had only been appointed to his case that morning and therefore was not familiar with Silva’s mental state. He also argues that his reference to time in the psychiatric ward also put the court on notice. Silva claims that the testimony about his mental health and delusions at trial was yet another indication of his lack of competency. Finally, he argues that his erratic behavior at sentencing demonstrated that his competency was in question.

The record supports the State’s argument that there was no reason to doubt Silva’s competency throughout proceedings. Because the trial court had no reason to doubt Silva’s competence, it did not abuse its discretion by not ordering a competency evaluation. Although Silva indisputably has mental health issues, the record does not indicate that these issues rose to the level of incompetency. Nothing about Silva’s appearance, conduct, or demeanor gave the trial court reason to doubt Silva’s competency. Silva was able to represent himself through trial successfully and make a proficient argument in his defense. Silva’s reliance on the facts of the incidents that led to his charges is ultimately unpersuasive because these facts are not demonstrative of his conduct at trial. At the time of the incidents, Silva was off his medications, using marijuana, and undergoing a self-described psychotic break. By the time that Silva began court proceedings, he gave no signs nor exhibited any behaviors to questions his

ability to understand the proceedings or ability to represent himself. Similarly to Fleming, Silva exhibited no irrational behavior or conduct that would alert the court that a competency hearing was necessary. Because there was no reason to doubt Silva's competence, the trial court did not abuse its discretion.¹

III.

Silva also argues that his counsel was constitutionally ineffective for failing to raise the issue of competency. To prevail on a claim of ineffective assistance of counsel, the defendant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense. Fleming, 142 Wn.2d at 865. Silva analogizes his case to Fleming. In Fleming, the court found that the defendant's lawyers were ineffective because none of them raised the issue of the defendant's competency, even though they knew there was an expert report that said the defendant was incompetent. Fleming, 142 Wn.2d 853 at 867. Defense counsel claimed that this was a trial tactic, however, the court held that counsel's failure to raise competency was unreasonable. Fleming, 142 Wn.2d 853 at 867.

Unlike in Fleming, nothing in the record before us supports that defense counsel was in possession of expert reports or other evidence indicating Silva was not competent. Silva fails to demonstrate that his counsel's performance was deficient.

¹ In his statement of additional grounds, Silva makes several claims that are not persuasive. Silva argues that Martinez's recorded statement was not provided to him until halfway through trial. It appears that Silva and the prosecutor agreed to admit part of Martinez's statement through Detective MacDonald's testimony, therefore, there was no discovery violation. Silva argued that his right to speedy trial was violated under CrR 3.3. Silva asked for and was granted a continuance on August 3, 2018. Silva signed the continuance order. Silva also argues that he was not provided the date of trial. Silva was provided the date of October 15, 2018 at the August 3, 2018, hearing. After additional continuances, Silva was notified that trial would begin on October 16 or 17, and trial did begin on October 17, 2018.

No. 79226-1-I/9

We affirm.

Mann, C.J.

WE CONCUR:

Brennan, J.

H.S.J.

Appendix B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 79226-1-I
)	
Respondent,)	
)	DIVISION ONE
v.)	
)	
RAMON SAUL SILVA,)	ORDER DENYING MOTION
)	FOR RECONSIDERATION
Appellant.)	
_____)	

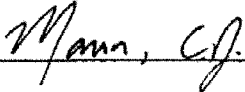
Ramon Silva has moved to reconsider the court's opinion filed on April 20, 2020.

The panel has determined that the motion should be denied.

Therefore, it is

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



August 03, 2020 - 4:22 PM

Transmittal Information

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Appellate Court Case Number: 98762-9
Appellate Court Case Title: State of Washington v. Ramon Saul Silva Jr.

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