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FEB 05 2009

King County Prosecutor
Appellate Unit

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

STEVEN HEDDRICK, JR.,

Petitioner.

No. 80841-4

STATEMENT
OF ADDITIONAL
AUTHORITY

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STATE OF WASHINGTON
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Pursuant to RAP 10.8, petitioner cites to the following additional

authority:

State v. Stegall, 124 Wn.2d 719, 724-25, 730, 881 P.2d 979 (1994) ("In general, constitutional rights may only be waived by knowing, intelligent, and voluntary acts."); ("The validity of any waiver of a constitutional right, as well as the inquiry required by the court to establish waiver, will depend on the circumstances of each case, including the defendant's experience and capabilities. Johnson v. Zerbst, 304 U.S. 458, 464, 82 L. Ed. 1461, 58 S. Ct. 1019, 146 A.L.R. 357 (1938). Moreover, the inquiry by the court will differ depending on the nature of the constitutional right at issue."); ("The burden of proving the waiver of a constitutional right rests with the State, not the defendant.").

State v. Wicke, 91 Wn.2d 638, 645, 591 P.2d 452 (1979) ("In examining a claimed waiver by a criminal defendant of a right constitutionally guaranteed to protect a fair trial, it would seem that every reasonable presumption should be indulged against the waiver of such a right, absent an adequate record to the contrary.").

Kibert v. Peyton, 383 F.2d 566, 569 (4th Cir. 1967) ("The Supreme Court has held categorically that the defense of incompetency to stand trial cannot be waived by the incompetent, Pate v. Robinson, 383 U.S. 375, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966), and it ineluctably follows that his counsel cannot waive it for him by failing to move for examination of his competency.") (cited by State v. Smith, 88 Wn.2d 639, 642, 564 P.2d 1154 (1977)).

In re Davis, 8 Cal. 3d 798, 808, 505 P.2d 1018, 106 Cal. Rptr. 178 (Cal. 1973) (when a "doubt" arises in the mind of the trial judge regarding defendant's competence to stand trial, it becomes the judge's duty to certify the defendant for a hearing; the matter cannot be waived by defendant or his counsel) (cited by State v. Smith, 88 Wn.2d 639, 642, 564 P.2d 1154 (1977)).

People v. Lucas, 47 Mich. App. 385, 388-89, 209 N.W.2d 436 (Mich. Ct. App. 1973) ("A waiver is defined as the voluntary relinquishment of a known right or known advantage. [citations omitted] Defendant's ability to waive his right to a competency hearing depends entirely upon the coexistence of his ability to understand the nature of the rights, consequences of forfeiture, and voluntary nature of the choice. Simply stated, defendant must be competent to execute a voluntary waiver. Thus, the trial court's acceptance of defendant's waiver would require an assumption of competency, the very question which must be answered by the hearing which the trial judge must conduct. The protection afforded defendants by this statute cannot be subverted by assumptions which merely beg the question. In Pate v Robinson, 383 U.S. 375, 384; 86 S Ct 836, 841; 15 L. Ed. 2d 815, 821 (1966), the Court stated: 'But it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial.' This prohibition against defendant's waiver of a competency hearing, a right exclusively possessed by defendant, is no less applicable to defense counsel.").

People v. Marks, 45 Cal. 3d 1335, 1340-41, 1343-44, 756 P.2d 260, 248 Cal. Rptr. 874 (Cal. 1988) (after trial court found reason to doubt competency, defense counsel indicated belief client was competent, which court likely construed as waiver of issue; reversal required because obligation and authority to determine defendant's competency belong to the trial court, not counsel; rejected state's argument that reason to doubt competency never existed because it would require appellate court to "second guess" the trial court's finding that a hearing was required: "once the hearing was ordered, it had to be held.").

People v. Hale, 44 Cal. 3d 531, 541, 749 P.2d 769, 244 Cal. Rptr. 114 (Cal. 1988) (court found reason to doubt competency but failed to hold hearing; state insisted defense counsel abandoned the competency issue after determining pursuit of the issue would be fruitless: reversal required because defense counsel cannot waive hearing).

People v. Westbrook, 62 Cal. 2d 197, 203, 397 P.2d 545, 41 Cal. Rptr. 809 (Cal. 1964) (regarding competency, "[t]he doubt is in the mind of the trial judge, and cannot be affected or waived by defendant or his counsel.").

People v. Brandon, 162 Ill. 2d 450, 457, 643 N.E.2d 712 (Ill. 1994) ("Where a defendant's capacity is the issue in question, it is anomalous to even consider concepts of waiver. As the United States Supreme Court has recognized, 'it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial.' Pate v. Robinson (1966), 383 U.S. 375, 384, 15 L. Ed. 2d 815, 821, 86 S. Ct. 836, 841."); overruled on other grounds, People v. Mitchell, 189 Ill. 2d 312, 333-34, 727 N.E.2d 254 (Ill. 2000).

People v. Kinkead, 168 Ill. 2d 394, 406, 660 N.E.2d 852 (Ill. 1995) (trial counsel's failure to pursue defendant's right to request a competency hearing does not waive the issue).

People v. Johnson, 15 Ill. App. 3d 680, 686, 304 N.E.2d 688 (Ill. App. Ct. 1973) (neither defendant nor trial counsel could waive defendant's right to jury trial in restoration hearing to determine the defendant's competency: "[T]o accept defendant's opinion, and that of his counsel by stipulation, that he was able to cooperate with counsel in his defense, when the purpose of a competency hearing in defendant's behalf was to determine that very fact, would be to make a sham out of the restoration hearing.").

Thompson v. Commonwealth, 50 S.W.3d 204, 206 (Ky. 2001) ("the trial court's own order establishe[d] the sufficiency of the trial judge's level of doubt as to Thompson's competence to plead guilty" but defense counsel subsequently conceded competency; hearing required by statute and constitutional due process was mandatory and could not be waived).

State v. Carney, 663 So. 2d 470, 473 (La. Ct. App. 1995) ("Due process and our statutory law require that the issue of the defendant's mental capacity to proceed shall be determined by the court. [citation omitted] This cardinal principle . . . prohibits [the court] from committing the ultimate decision of competency to a physician or anyone else." [citation omitted] "Once a motion to appoint a sanity commission has been made, it takes on a life of its own as nothing further can happen without resolving the issue of the defendant's mental capacity. An attorney independently waiving or withdrawing the motion is an insufficient resolution of the issue. The trial court, not the defense attorney, is mandated to determine the defendant's mental capacity to proceed and rule on the motion.").

Commonwealth v. Nelson, 489 Pa. 491, 494, 497, 414 A.2d 998 (Pa. 1980) (addressing claim that trial counsel was ineffective in failing to request a hearing on appellant's competency to stand trial; "we . . . will not permit the waiver of a claim of incompetency, so basic is it to our concepts of justice that a trial of an incompetent is no trial at all.")

DATED this 5th day of February 2009.

Respectfully submitted,

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