

# Appeals court overturns child rape conviction

Rules burden placed on wrong side

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By Cameron Probert, Herald staff writer | 0 comments

SPOKANE - An appeals court overturned a second-degree rape of a child conviction stating a competency hearing was handled incorrectly.

The Washington State Court of Appeals, Division III, ruled, in a 2-to-1 decision, prosecutors needed to prove Blayne J. Coley was competent during a June 2010 hearing.

Judge Stephen Brown dissented, stating the court did not make a mistake, and pointing out Coley said he was competent during the hearing, and is reversing his position.

"We agree with dissenting opinion of Judge Brown who wrote that no 'due process or structural error occurred,'" Prosecutor Angus Lee stated. "We intend to appeal to the Supreme Court."

The case revolves around a June 2008 incident where Coley claimed he was molested by a teenager. Grant County sheriff's deputies allegedly learned of two prior incidents between Coley and a boy.

After Coley was charged with two counts of second-degree rape of a child, his competency became an issue. A judge approved a motion to evaluate Coley's competency in July 2008, and he was transported to Eastern State Hospital, according to court records. Hospital officials found Coley wasn't competent to stand trial, and the proceedings were delayed for 90 days.

Coley was brought back into court in December 2008 for a competency hearing, and concluded Coley regained his competency, according to court records. A judge questioned Coley's competency again in April 2009, following a hearing where Coley was waiving his right to a jury trial and wanted to represent himself.

"Mr. Coley made several incomprehensible arguments," according to the opinion. "The judge expressed concern over whether he was competent to proceed. The court ordered that Mr. Coley undergo another competency evaluation."

The judge delayed the case for 90 days again because Coley wasn't competent to proceed, according to court records. When the case was heard again in October 2009, prosecutors and

the defense attorney didn't agree on whether Coley was competent or not. The Eastern State Hospital doctor believed Coley was competent and the defense's expert disagreed, sending the case to a competency hearing.

At the hearing, Grant County Superior Court Judge John Antosz ruled the defense attorney had the burden of proving Coley was incompetent. Antosz based the decision on the idea Coley was determined competent in December 2008, and questions were later asked about his competency.

"Maybe there would be a different question if a defendant is originally found to be incompetent and then there is a hearing," Antosz ruled, according to the opinion. "But here there is already an order that finds him to be competent and I do understand that Judge (Evan) Sperline later had some questions about competency."

The defense expert testified Coley understood the nature of the proceedings, but couldn't assist his attorney, according to the opinion. The prosecutor's expert testified Coley understood the proceedings, and was capable of assisting in his defense, but might not be willing to do so. The judge watched a 57-minute interview with Coley done by the prosecutor's expert.

Coley also testified, saying he was competent, according to the opinion. Antosz ruled Coley was competent.

Coley was tried twice. The first trial ended in a mistrial. A jury found Coley guilty of both counts during a second trial. Coley was sentenced to a range of 10 years to life in prison.

Judge Dennis Sweeney wrote the majority opinion, ruling Antosz was mistaken about whether Coley was competent or wasn't competent at the time of the hearing. Acting Chief Judge Laurel Siddoway joined with Sweeney.

They ruled the most recent order wasn't in December 2008, it was in July 2009, when the proceedings were delayed for 90 days.

"We conclude then that the operative presumption should have been that Mr. Coley was incompetent to stand trial, and the burden would have shifted to the state to prove that he was competent," Sweeney wrote.

The judges ruled when the proceedings were delayed for a mental health evaluation a second time, he was presumed to be incompetent.

"Mr. Coley had a fundamental right not to stand trial while incompetent, and to require an incompetent defendant (someone who is presumably unable to understand the proceedings or

assist in his own defense) to prove that he remains incompetent is, for us, unconstitutional," according to the opinion.

The prosecutors argued if there was an error it was harmless, according to the opinion. The judges disagreed, stating placing the burden of proof on an incompetent person taints the entire proceeding.

Brown disagreed, pointing out Coley's attorney agreed the burden should be on Coley.

"I do not believe it is now appropriate for Mr. Coley to change his position here," Brown wrote. "Moreover, at the competency hearing, the court considered extensive evidence."

The judge disagreed with Sweeney's and Siddoway's interpretation, stating Antosz didn't make a mistake when he determined Coley bore the burden of proof.

"The court conducted a lengthy competency hearing, and both parties presented evidence to support their arguments. As the state argues, any error is therefore merely theoretical," Brown wrote. "The record supports the trial court's reasoning that Mr. Coley had the ability to understand the proceedings and assist in his defense."