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NO. 61417-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CHASE MICHAEL DAUGHERTY,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LeROY McCULLOUGH

SUPPLEMENTAL BRIEF OF RESPONDENT
RE: STATE V. HEDDRICK

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A. ISSUE

Does State v Heddrick, determine the result in this case?

B. FACTS

A complete statement of facts was set forth in the Brief of Respondent filed on January 29, 2009. The most pertinent facts may be summarized as follows.

Daugherty was charged with multiple offenses in juvenile court under separate cause numbers. He was represented by two different lawyers. Because there was a reason to doubt his competency, a competency evaluation was ordered. CP 28-29; CP 33-39.

Daugherty was ultimately evaluated by three separate experts. On May 21, 2007, Dr. Rawlings opined that Daugherty was not competent. See Br. of Respondent, Appendix A, Ex. A at 2. Daugherty was then evaluated by Dr. Kristina Franey, who opined that Daugherty was not competent. 2RP 3-4. The parties agreed that Daugherty was not competent so, on October 9, 2007, Daugherty was sent to Western State Hospital (WSH) in an attempt to restore competency. 3RP 7; CP 46-47.

After a period of hospitalization and treatment, WSH submitted a report dated October 24, 2007, to the court, the prosecutor, and both defense counsel. Br. of Resp. (Ex. A). This report concluded that although Daugherty may suffer from some mental illness, "his present symptoms are not severe as to render him either unable to appreciate the nature of the legal proceedings against him or unable to assist defense counsel." Ex. A at 1, 9.

In a hearing on October 30, 2007, two lawyers representing Daugherty agreed that he was now competent to stand trial.

Defense counsel Mr. McDonald said:

I retain some concerns about his mental health, however, at this point I believe that I can at least maintain a reasonable client relationship and I believe that at this point in time per his direction and after my conversation with him, I think we simply have to stipulate to competency.

4RP 4. Mr. McDonald continued, "my observation of [Daugherty] today tells me that he's — and after listening to him — tells me that he's able to at least give me client direction and have some understanding of the proceedings." 4RP 5. The attorney said that based on the report and his own observation and communication with Daugherty, "I would be willing . . . to stipulate to competency at this point." 4RP 5.

Defense counsel Martha Walton appeared on behalf of Meloni Ludwig-Dizon and agreed that Daugherty was competent. She noted that “my understanding is the same as Mr. McDonald’s, and so today we would be signing the order and agreeing that *the respondent at this time is competent.*” 4RP 5-6 (emphasis added).

The court then found Daugherty competent based both on the stipulation of the parties and Dr. Gagliardi’s report:

The court then will, based on the stipulations of record, based on my review of the forensic psychological evaluation dated October 24, 2007, find the respondent at this time competent to understand the nature of the proceedings against him and to assist counsel.

4RP 6-7. The court further noted that the test scores showed that Daugherty was competent. 4RP 6-7.

The parties proceeded to a fact finding on the MIP charge, where Daugherty was convicted as charged.

C. ARGUMENT

In State v. Heddrick, 166 Wn.2d 898, 215 P.3d 201 (2009), the Washington Supreme Court held that failure to object to a competency finding or the procedures followed in making that

finding precludes appellate review of the competency issue.

Heddrick controls the result in this case.

Heddrick faced multiple charges in superior court and, while trial was pending, his competency to stand trial was questioned. Heddrick, 166 Wn.2d at 901. He was initially found incompetent, and a period of treatment followed. Id. at 902. Defense counsel Ms. Lapps informed the court that treating physicians had found Heddrick competent. Id. The court signed an order finding competency but defense counsel on Heddrick's other pending case, Mr. Naylor, was not present and did not sign that order. Id. Following conviction, Heddrick appealed, claiming that the court should not have signed a competency order without following each procedure outlined in RCW 10.77.060, and arguing that it was error to sign an order when Mr. Naylor was not present. Id. at 903.

The Court observed that "the procedures outlined in RCW 10.77.060 were not fully followed in either of Heddrick's cases. . . ." Heddrick, at 904. But, the Court concluded "we hold that the statutory competency procedures may be waived, and Heddrick effected a waiver at trial when his counsel Lapps withdrew the challenge to competency." Id. at 908. The court also held that the trial court need not raise a competency concern on its own; the

court is entitled to rely on the representations of defense counsel that there is no reason to doubt the defendant's competency. Id. at 908-09. Finally, the court noted that the withdrawal of a competency challenge is invited error. Id. at 909.

Heddrick is nearly identical to this case. Following multiple evaluations and a period of treatment, doctors found Daugherty to be competent. Both his lawyers agreed with this finding, and expressly stipulated to orders of competency. Under such facts, any error in following each procedure outlined in RCW 10.77.060 was invited. Moreover, any error was not preserved for review.

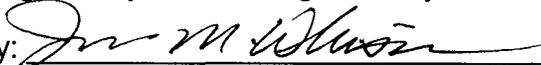
D. CONCLUSION

For these reasons, Daugherty's claim on appeal should be rejected, and his conviction should be affirmed.

DATED this 6th day of January, 2009.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

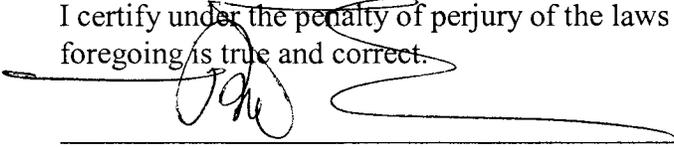
By: 

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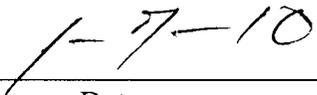
Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Eric Broman, of Nielsen, Broman and Koch, P.L.L.C., at the following address: Central Building, 1908 East Madison Street, Seattle, WA 98122, the attorney of record for the appellant, containing a copy of the Supplemental Brief of Respondent in STATE V. MICHAEL DAUGHERTY, Cause No. 61417-7-I in the Court of Appeals of the State of Washington, Division I.

I certify under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name

Done in Seattle, Washington



Date