

No. 62513-6-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY DIAS,

Appellant.

2009 JUN 23 PM 4:53

COURT OF APPEALS
STATE OF WASHINGTON
FILED

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

BRIEF OF APPELLANT

GREGORY C. LINK
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 1

C. STATEMENT OF THE CASE 2

D. ARGUMENT 3

THE TRIAL COURT ERRED AND DEPRIVED MR.
DIAS OF DUE PROCESS BY FINDING HIM
COMPETENT TO STAND TRIAL 3

1. Due process does not permit the trial or
conviction of an incompetent defendant 3

2. The court erred in finding Mr. Dias competent to
stand trial..... 4

3. Because the trial court erroneously found Mr.
Dias competent, this Court must reverse his
conviction 7

E. CONCLUSION..... 8

TABLE OF AUTHORITIES

United States Constitution

U.S. Const. amend. XIV 1, 3, 7

Washington Supreme Court

In re the Personal Restraint of Fleming, 142 Wn.2d 853, 16 P.3d 610 (2001)..... 4

State v. Ortiz, 104 Wn.2d 479, 706 P.2d 1069 (1985)..... 4

Washington Court of Appeals

State v. Harris, 122 Wn.2d 98, 94 P.3d 379 (2004)..... 4

State v. Hicks, 41 Wn.App. 303, 704 P.2d 1206 (1985) 4

State v. Israel, 19 Wn.App. 773, 577 P.2d 678 (1978) 6

United States Supreme Court

Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 43 L. Ed. 2d 103 (1975) 3, 7

Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L. Ed. 2d 824 (1960) 4

Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L. Ed. 2d 815 (1966) 3

Statutes

RCW 10.77.050..... 4

A. ASSIGNMENT OF ERROR

1. The trial court deprived Anthony Dias of his right to due process by failing to find him incompetent.

2. In the absence of sufficient evidence the trial court erred in entering Finding of Fact 2 regarding Mr. Dias's competency.

3. In the absence of sufficient evidence the trial court erred in entering Finding of Fact 3 regarding Mr. Dias's competency.

4. In the absence of sufficient evidence the trial court erred in entering Finding of Fact 4 regarding Mr. Dias's competency.

5. In the absence of sufficient evidence the trial court erred in entering Finding of Fact 5 regarding Mr. Dias's competency.

6. In the absence of sufficient evidence the trial court erred in entering Finding of Fact 6 regarding Mr. Dias's competency.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The Due Process Clause of the Fourteenth Amendment prohibits convicting an incompetent defendant. A criminal defendant is incompetent where he cannot reasonably assist in their own defense. When considering a defendant's ability to assist his attorney, a trial court must give considerable weight to the defense attorney's opinion. The trial court did not give any weight to the views of counsel much less give them great weight. Where

there is no indication the trial court ever consider defense counsel's opinion as to Mr. Dias's competency does his conviction violate the Fourteenth Amendment?

C. STATEMENT OF THE CASE

Mr. Dias was charged with seven counts of first degree rape, three counts of each first degree burglary and unlawful imprisonment, two counts of each second degree assault, first degree robbery, and indecent liberties. CP 18-33. In addition, the State alleged each of the offenses was committed with a firearm.

Id.

On the motion of defense counsel, the trial court ordered Mr. Dias be transferred to Western State Hospital (WSH) for a competency evaluation. CP 34-35, 47-55.

Following an examination, WSH staff concluded Mr. Dias was competent to stand trial. Supp, CP __; Sub No. 99. Defense counsel submitted report by Dr. George Woods who concluded following his evaluation that Mr. Dias suffered post concussive syndrome following an automobile accident which exacerbated preexisting mood symptoms. Supp, CP __; Sub No. 99 (August 9, 2007 Report of George Woods at 3-4). Dr. Woods

concluded this exacerbation of symptoms rendered Mr. Dias incompetent to assist his attorneys. Id. at 5-6.

Following a hearing, the trial court concluded Mr. Dias was competent to assist his attorneys. CP 56-58.

Mr. Dias subsequently entered guilty pleas to amended charges of three counts of first degree rape, three counts of first degree burglary, three counts of unlawful imprisonment, two counts of second degree assault, two counts of first degree robbery, and two counts of indecent liberties. CP 182-227.

D. ARGUMENT

THE TRIAL COURT ERRED AND DEPRIVED MR.
DIAS OF DUE PROCESS BY FINDING HIM
COMPETENT TO STAND TRIAL

1. Due process does not permit the trial or conviction of an incompetent defendant. The Due Process Clause of the Fourteenth Amendment prohibits the conviction of a person who is not competent to stand trial. 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). A person is competent to stand trial only when he has "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.” Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L. Ed. 2d 824 (1960) (internal quotations omitted).

This standard is embodied in RCW 10.77.050, which provides “[n]o incompetent person may be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.” RCW 10.77.050; In re the Personal Restraint of Fleming, 142 Wn.2d 853, 861-62, 16 P.3d 610 (2001).

2. The court erred in finding Mr. Dias competent to stand trial. A trial court has a degree of discretion in determining an individual’s competency. State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985). However,

[a] lawyer’s opinion as to his client’s competency and ability to assist in his own defense is a factor to which the trial court must give considerable weight in determining a defendants competency to stand trial.

State v. Hicks, 41 Wn.App. 303, 307, 704 P.2d 1206 (1985); see also, State v. Harris, 122 Wn.2d 98, 105, 94 P.3d 379 (2004).

Mr. Dias’s attorneys asserted that while he had a minimal understanding of the proceedings, Mr. Dias lacked the ability to rationally assist them; that he could not “participate meaningfully in a host of decisions that are required of him.” CP 53-55; 12/5/07 RP

15. In addition, defense counsel submitted the report of Dr. Wood which drew a specific connection between the exacerbation of preexisting symptoms brought about by the post-concussive syndrome and Mr. Dias's inability to meaningfully assist counsel. Supp, CP __; Sub No. 99 (August 9, 2007 Report of George Woods at 3-6).

The court nonetheless found Mr. Dias competent without meaningfully addressing either the Dr. Woods's conclusion or the opinion of defense counsel. Moreover, the State did not offer any evidence to rebut defense counsel's contention that Mr. Dias was simply unable to assist in his own defense. Most importantly in reaching its decision the trial court did not give any weight to the evidence of incompetency submitted by Mr. Dias's attorneys.

The court made the following findings:

....

2. The defendant is able to discuss with his attorneys the case against him, the evidence, the legal theories and methods of proceeding in his defense.
3. The defendant has the ability to participate in his defense with his attorneys, though he may not always agree with their advice.
4. The defendant's observed symptoms do not rise to the level that make the defendant incapable of assisting his attorneys. Based on the report considered by the court, it is likely those symptoms

are reflections of the defendant's current legal situation, a personality trait, or a product of his life experience, rather than incompetence to assist his counsel.

5. Although the court acknowledges the defendant may need medications or other medical intervention to address his symptoms, this fact alone does not render the defendant incompetent due to an inability to participate in his defense.

6. The defendant understands the nature of the proceedings against him and is able to effectively assist counsel in the defense of his case.

CP 57-58.

The court entered relatively detailed findings; even referencing "the report" upon which it relied to conclude Mr. Dias had the ability to assist. Yet these detailed findings do not mention, much less give weight to the opinions of defense counsel or the defense expert. The court's oral ruling was similarly silent as to defense counsel's view of Mr. Dias's abilities. 12/5/08 RP 32-34. An "expressed doubt" by defense counsel regarding competency, as "one with the closest contact with the defendant" is "unquestionably a factor which should be considered." State v. Israel, 19 Wn.App. 773, 779, 577 P.2d 678 (1978) (citation omitted). Yet the court's findings do not offer any insight into the court's wholesale rejection of the opinion of the persons "with the

closest contact with” Mr. Dias. Nothing in the trial court’s findings or oral ruling hints at the consideration the court gave defense counsel opinion, indeed, it does not mention defense counsel opinion at all.

Mr. Dias’s attorney’s presented evidence the he could not assist them in his defense. The State offered nothing to rebut that specific claim. In reaching its conclusion, the Court did not give the opinion of counsel any weight. By failing to consider the opinions of defense counsel, the court erred in finding Mr. Dias competent.

3. Because the trial court erroneously found Mr. Dias competent, this Court must reverse his conviction. Because the Fourteenth Amendment does not permit the conviction of an incompetent person, Drope, 420 U.S. at 171, this Court must reverse Mr. Dias’s convictions so that the trial court may properly determine his competency to stand trial or enter a plea.

E. CONCLUSION

For the reasons above this Court should reverse Mr. Dias's convictions..

Respectfully submitted this 23rd day of June 2009.



GREGORY C. LINK – 25228
Washington Appellate Project – 91052
Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	
)	
ANTHONY DIAS,)	
)	
Appellant.)	

NO. 62513-6-I

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2009 JUN 23 PM 4:53

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 23RD DAY OF JUNE, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | |
|--|-------------------|-------------------------------------|
| <input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY
APPELLATE UNIT
KING COUNTY COURTHOUSE
516 THIRD AVENUE, W-554
SEATTLE, WA 98104 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |
| <input checked="" type="checkbox"/> ANTHONY DIAS
316640
WASHINGTON STATE PENITENTIARY
1313 N 13 TH AVE
WALLA WALLA, WA 99362 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |

SIGNED IN SEATTLE, WASHINGTON THIS 23RD DAY OF JUNE, 2009.

X _____
grd

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710