

NO. 62513-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY DIAS,

Appellant.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 SEP 18 PM 4:41

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BRIAN GAIN

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

AMY R. MECKLING
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	5
1. THE TRIAL COURT PROPERLY CONSIDERED DEFENSE COUNSEL'S OPINION REGARDING DIAS'S COMPETENCY AND DID NOT ERR WHEN IT DETERMINED THAT DIAS WAS COMPETENT TO STAND TRIAL	5
D. <u>CONCLUSION</u>	10

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Crenshaw, 27 Wn. App. 326,
617 P.2d 1041 (1980)..... 6

State v. Dodd, 70 Wn.2d 513,
424 P.2d 302 (1967)..... 6

State v. Hicks, 41 Wn. App. 303,
704 P.2d 1206 (1985)..... 6

State v. Israel, 19 Wn. App. 773,
577 P.2d 631 (1978)..... 6

State v. Ortiz, 104 Wn.2d 479,
706 P.2d 1069 (1985)..... 6

State v. Swain, 93 Wn. App. 1,
968 P.2d 412 (1998)..... 6

Statutes

RCW 10.77.010..... 6

A. ISSUES PRESENTED

A trial judge has wide discretion in determining a criminal defendant's competency to stand trial. Such a finding will not be overturned absent a manifest abuse of discretion. While a lawyer's opinion as to his client's competency is a factor that is entitled to considerable weight, it is not dispositive. Did the court properly find Dias competent when it appropriately considered the defense attorney's and his expert's opinions?

B. STATEMENT OF THE CASE

Appellant Anthony Dias was charged in King County Superior Court with nineteen felony charges relating to three separate incidents of home invasion rape, assault and robbery. CP 18-29. There were a total of fourteen victims involved in the nineteen counts. CP 5-6, 15-17, 30-33.

Defense counsel raised the issue of Dias's competency, and the court committed him to Western State Hospital for observation and evaluation. CP 34-35. On July 2, 2007, Dr. Gregg Gagliardi submitted an Evaluation Status Report. CP 267-69. In the report, Dr. Gagliardi determined that Dias was not suffering from any

mental disorder except "situational depression, anxiety, and anger."
CP 268.

However, Dr. Gagliardi noted that Dias might be minimizing his psychological issues, and also noted that Dias had reported two previous head injuries. Dr. Gagliardi asked for specific information that he felt was needed to conduct a thorough competency evaluation. Dr. Gagliardi requested Dias's hospital records and jail health records. Additionally, he wanted to interview Dias's wife. Finally, Dr. Gagliardi noted that Dias's counsel was unwilling to reveal specific details of the problems they were having working with their client. He recommended that they hire their own expert to evaluate Dias if that reluctance stemmed from Dr. Gagliardi's position as a State-evaluator. CP 268-69.

Dias's counsel had apparently already hired Dr. George Woods, who opined in a written report dated August 9, 2007, that Dias was incompetent. CP 270-75. Dr. Woods asserted that Dias suffered "post concussive syndrome" as a result of a July 2005 car accident. CP 270. Woods claimed that Dias had a "vulnerability" to mood disorders prior to the accident, and that after it he became manic, hypersexual, depressed and suicidal. CP 272. Woods claimed that Dias continued to manifest paranoid ideation toward

his attorneys and Woods, and that an "exacerbation of mood symptoms" as a result of the car accident rendered Dias incompetent. CP 273-74. More specifically, Woods claimed that Dias's paranoia, depression and distrust of his attorneys impeded his ability to provide them with valuable information regarding his role in the crimes, and as such rendered him unable to rationally assist his attorneys in the preparation of his case. CP 274-75.

As a result of Dr. Woods's assessment, Dr. Gagliardi referred Dias to Dr. Christopher Graver, a neuropsychologist, who conducted a neuropsychological assessment of Dias. Dr. Graver determined that there was "no physical or neurological evidence that [Dias] suffered a head injury or resulting traumatic brain injury." CP 276-81.

Dr. Gagliardi authored his final report on October 23, 2007, concluding that Dias was competent to stand trial. CP 283-301. He noted that the diagnosis of post concussive syndrome following the 2005 car accident was based entirely on Dias's own self-report, as there was no objective physical finding of head or brain injury. CP 291. Dr. Gagliardi found no evidence that Dias suffered from psychotic symptoms or cognitive dysfunction. CP 292. Dr. Gagliardi determined that although it was clear that Dias did not

trust his attorneys and disagreed with the way they were handling his case, Dias had the capacity to understand the legal proceedings and had the capacity to assist his attorneys. Dr. Gagliardi concluded that Dias's distrust of his lawyers did not stem from a mental disorder, but was more likely a personality trait. CP 300.

A contested competency hearing was scheduled, and on November 13, 2007, the defense filed a motion to close the courtroom during the hearing. The motion was based on counsel's concern that matters of Dias's mental health and matters subject to attorney-client privilege would be discussed during testimony, and that media interest in the case would prejudice Dias's right to a fair trial. CP 36-40. Following a hearing, the court denied Dias's motion to close the courtroom. 11/13/07 RP 1-24.

Following denial of the defense motion, the parties stipulated that the court could make its determination of competency without testimony, based on the expert's written reports and psychological literature submitted by the defense. 12/3/07 RP 2. The court also allowed defense counsel to submit an *ex parte*, sealed declaration, outlining their specific concerns about Dias's ability to assist them in the defense of his case. Supp. CP ___ (Sub. No. 97, Declaration of Counsel, Filed Dec. 5, 2007); 12/5/07 RP 30-31.

Following review of the materials submitted by the parties, and following oral argument, the court found Dias competent to stand trial. CP 56-59; 12/5/07 RP 28-34. Dias later entered pleas of guilty to fifteen felony charges and was sentenced to a life sentence with a minimum term of 432 months. CP 133-49, 182-95, 228-33.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY CONSIDERED DEFENSE COUNSEL'S OPINION REGARDING DIAS'S COMPETENCY AND DID NOT ERR WHEN IT DETERMINED THAT DIAS WAS COMPETENT TO STAND TRIAL.

Dias argues that the court made its determination of competency without regard to the opinions of his counsel or his retained expert, Dr. Woods. Thus, he argues that the court erred in finding him competent. He is wrong. The trial court properly considered the opinions of Dias's lawyers and his expert but disagreed, concluding instead that Dias understood the proceedings,¹ and that he had the capacity to assist in his defense. The trial court's decision was not an abuse of discretion.

¹ During the competency hearing, Dias's lawyers stipulated that he had the ability to understand the nature of the proceedings. The debate centered on whether or not Dias could rationally assist in his defense. 12/5/07 RP 4.

A person is competent to stand trial if he has the capacity to understand the nature of the proceedings against him and is able to assist his attorneys in his defense. RCW 10.77.010(14); State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985). A trial judge is given wide discretion in determining the competence of a defendant, and its decision on competence will not be reversed absent a manifest abuse of discretion. Ortiz, 104 Wn.2d at 482; State v. Crenshaw, 27 Wn. App. 326, 330, 617 P.2d 1041 (1980). The trial court's decision is entitled to deference because of its ability to observe the defendant's behavior and demeanor. State v. Swain, 93 Wn. App. 1, 9, 968 P.2d 412 (1998).

While a lawyer's opinion as to his client's competency is a factor that is entitled to considerable weight, it is not dispositive. State v. Israel, 19 Wn. App. 773, 779, 577 P.2d 631 (1978); State v. Hicks, 41 Wn. App. 303, 307, 704 P.2d 1206 (1985); Crenshaw, 27 Wn. App. at 331. The determination of competency may be made "from many things, including the defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports, and the statements of counsel." State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302 (1967).

In support of their motion to find Dias incompetent, Dias's lawyers argued that he had suffered a head injury during an automobile accident, which exacerbated a pre-existing mood disorder, and manifested itself in depression and anger. CP 53-54. Defense counsel believed that since Dias's incarceration, he continued to manifest symptoms of mental illness, including suicidal ideation and paranoid beliefs about his defense counsel. CP 53-54. Dias's attorneys felt that these symptoms interfered with Dias's ability to rationally assist them. CP 54. Dr. Woods's report supported defense counsel's arguments. CP 270-75.

Defense counsel also submitted an *ex parte*, sealed declaration outlining in more specificity the reasons they believed Dias was unable to assist in the preparation of his defense. Supp. CP __ (Sub. No. 97, Declaration of Counsel, Filed Dec. 5, 2007); 12/5/07 RP 30-31. The declaration outlined Dr. Woods's assertion that Dias acknowledged some memory of the crimes, and yet simultaneously denied the existence of physical evidence, claiming that he'd been "framed." The declaration indicated that Woods believed that an insanity defense was a viable trial strategy, yet he argued that Dias did not have the capacity to evaluate such a

defense due to head trauma and bi-polar disorder. Supp. CP ___
(Sub. No. 97, Declaration of Counsel, Filed Dec. 5, 2007).

It is clear from the record that the trial court properly considered the opinion of defense counsel and Dr. Woods and rejected it, finding Dias competent. The court specifically noted that there was a relatively low threshold in regard to the ability to assist one's attorneys. 12/5/07 RP 29. The court believed "it is a question of ability and [Dias] is not incapacitated to the extent that he is unable to fulfill those rudimentary functions in assisting counsel." 12/5/07 RP 33. The court stated:

I am satisfied that it is not a question of paranoia or whether Mr. Dias trusts his attorneys or not, or whether there's suicidal ideation or whether or not he has mood swings. Many clients do not trust their attorneys, or trust anyone for that matter, and it's not a question of incapacity to do so, it's a question of life experience and/or ability personality-wise to trust other people, nor is the need for medication² or the fact that there are mood swings sufficient to incapacitate an individual in meeting the requirements to assist in his defense.

12/5/07 RP 33.

² After defense counsel had noted in her oral argument to the court that she did not believe Dias was receiving medication to appropriately treat his psychological issues, the court stated that it wanted to make sure that Dias received proper medication and offered to sign orders submitted by the defense toward that end. 12/5/07 RP 12, 33-34.

In its written findings, the court noted that it had observed the defendant, heard from counsel, and considered the expert reports from both the State and the defense. CP 57. The court specifically found that "[t]he defendant's observed symptoms³ do not rise to a level that make the defendant incapable of assisting his attorneys. . . . [I]t 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." CP 58.

In sum, there was a plethora of evidence before the court to support its determination that Dias had the ability to rationally assist his attorneys and that his unwillingness to do so did not stem from any incapacity. Drs. Graver and Gagliardi found no evidence that Dias suffered from a mental disorder, psychosis, cognitive dysfunction, or any sort of organic brain injury. CP 281, 284, 292. It was Dr. Gagliardi's opinion that Dias's suspiciousness and cynicism was more likely related to a personality trait instead of a

³ The originally proffered Findings of Fact and Conclusions of Law read "defendant proffered paranoia, distrust of his attorney . . . mood swings or suicidal ideations." 12/13/07 RP 13. *At defense counsel's request*, that language was changed to read "observed symptoms." The rationale behind the request was the defense concern that the document would be available to the public, and it was clear that they did not want Dias's mental health issues made public prior to his trial. *Id.* So if the written findings "do not offer any insight" into the court's consideration of the defense position, it is at Dias's own request.

mental disorder. CP 298, 300. The court was clearly swayed by the opinions of Drs. Graver and Gagliardi.

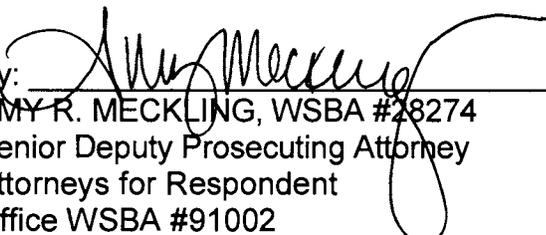
D. CONCLUSION

It is clear from the record that the trial court properly considered the opinions of defense counsel and their expert, Dr. Woods. It is equally clear that the court disagreed with their conclusion that the defendant did not have the capacity to assist in his defense. The record provides overwhelming support of the court's finding of competence and the court did not abuse its discretion.

DATED this 18 day of September, 2009.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
AMY R. MECKLING, WSBA #28274
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certification of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory C. Link, the attorney of record for the appellant, at the following address: Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101-3635, containing a copy of the Brief of Respondent, in STATE V. ANTHONY DIAS, Cause No. 62513-6-I, in the Court of Appeals, Division I, of the State of Washington.

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

Eileen Miyashiro
Done in Seattle, Washington

9/18/09
Date

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 SEP 18 PM 4:41