

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

VS.

VINNIE ADAMS.

Respondent.

Electronically Filed
Sep 28 2021 10:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENT'S ANSWERING BRIEF

(Appeal from Amended Decision and Order)

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Appellant,)	
)	Case No. 81782
vs.)	
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RESPONDENT’S ANSWERING BRIEF

JURISDICTIONAL STATEMENT

NRS 117.015(1)(b) provides that the State or the defendant may file an appeal “to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from an order of the district court granting a motion to dismiss, a motion for acquittal or a motion in arrest of judgment, or granting or refusing a new trial.”

On August 20, 2020, the district court entered and filed its Amended Decision and Order finding Vinnie Adams (“Adams”) incompetent without the possibility of restoration and dismissing his charges without prejudice. The State filed its Notice of Appeal on September 9, 2020.

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ISSUES PRESENTED FOR REVIEW

- I. Whether the district court abused its discretion when it applied a heightened standard to determine competency that resulted in a finding that the defendant was incompetent without the possibility of restoration and thereby dismissed his criminal case.

STATEMENT OF THE CASE

On October 19, 2018, Vinnie Adams (hereinafter “Adams”) was charged by way of Criminal Complaint with one count of Child Abuse, Neglect, or Endangerment Resulting in Substantial Bodily or Mental Harm (Category B Felony – NRS 200.508.1). I AA 2. On February 7, 2019, Dr. Sharon Jones-Forrester, a psychologist hired by Adams, conducted a neuropsychological evaluation of Adams. I AA 10. On August 1, 2019, Adams’ case was bound over to the district court for a Competency Evaluation. I AA 24. A Commitment and Order was filed on August 8, 2019. I AA 25.

On August 13, 2019, Dr. John Paglini, a licensed psychologist, interviewed Adams at the Clark County Detention Center and concluded that Adams was not competent. I AA 26. Six (6) days later, on August 19, 2019, Dr. Sunshine Collins, also a licensed psychologist, interviewed Adams and

found that he was not competent to stand trial. I AA 31. Accordingly, on August 23, 2019, the district court found Adams not competent and, pursuant to NRS 178.425THE , remanded Adams to the custody of the Administrator of the Division of Mental Health Development Services for the Department of Human Resources for detention and treatment at a secure facility until his competency had been established. I AA 39-41. The district court further noted that once Adams' competency had been established, he was to return to the district court for further proceedings. I AA 42.

Adams was sent to Stein Forensic Facility (hereinafter "Stein") and began his treatment and restoration of competency on September 5, 2019. I AA 63. While undergoing competency restoration at Stein, two (2) licensed psychologists, Dr. Sarah Damas and Dr. Lia Roley, as well as one (1) senior psychiatrist, Dr. Rami Abukamil, evaluated Adams. I AA 45-66. All three (3) individuals ultimately concluded that Adams was competent to stand trial. I AA 50, 59, 66. Based on these findings, the district court, on December 23, 2019, filed an Order to Transport Adams back to the Clark County Detention Center for further proceedings. I AA 68-69.

Subsequently, on December 27, 2019, Adams requested a continuance to allow Dr. Damas, Dr. Roley, and Dr. Abukamil the opportunity to review Dr. Jones-Forrester's neuropsychological evaluation report. I AA 70. Adams

requested several additional continuances awaiting a response from the aforementioned evaluators. I AA 71, 74. On February 21, 2019, Adams informed the district court that the Stein evaluators subsequent review of Dr. Jones-Forrester's neuropsychological evaluation report did not change their opinions, so he requested a challenge hearing be set. I AA 75.

On July 17, 2020, the district court conducted a challenge hearing wherein Dr. Aubkamil, Dr. Roley, Dr. Damas, and Dr. Jones-Forrester testified. I AA 98. On August 13, 2020, the district court filed a Decision and Order and found Adams not competent pursuant to Dusky v. U.S., 362 U.S. 402 (1960). I AA 185-89. A week later, on August 20, 2020, the district court filed an Amended Decision and Order and found that while Adams understood the nature of the charges against him, his intellectual and neurocognitive deficits rendered Adams incompetent without the possibility of restoration. Thereafter, Adams' charges were dismissed without prejudice and he was released from custody on his own recognizance. I AA 198, 203. On August 25, 2020, the district court filed Findings of Incompetency and Order for Civil Commitment or Release. I AA 207-09. The State filed a Notice of Appeal on September 9, 2020. I AA 210-11.

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STATEMENT OF THE FACTS

The Respondent adopts the State's Statement of Facts set forth in their Appeal from Amended Decision and Order with exception to their conclusion that there was overwhelming evidence of Mr. Adams ability to become competent.

SUMMARY OF THE ARGUMENT

The District Court did not abuse its discretion when it found Adams incompetent without the possibility of restoration and dismissed his charges. After extensive testimony and rigorous cross-examination, the Court applied the Dusky and NRS 178.400 factors to the facts of this case and correctly determined that Adams could not meet those standards for competency. The Court relied in part on the testimony of Dr. Sharon Jones-Forrester who conducted an extensive Neuropsychological examination of Adams and later completed an in-person observation of Adams interactions with counsel to determine his ability to understand the nature of the criminal charges against him, the nature and purpose of the court proceedings and his ability to aid and assist counsel in the defense of his case with a reasonable degree of rational understanding. The State did elicit testimony from (3) licensed professionals that Adams was competent at the time of their evaluations, however, in light of the testimony from Dr. Sharon Jones-Forrester and the

extensive testing she conducted regarding Adams neurocognitive disabilities, which were not evaluated by the State's witnesses, the Court did not abuse its discretion in finding Adams incompetent without the possibility of restoration. Accordingly, the State's appeal should be denied.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT FOUND ADAMS INCOMPETENT WITHOUT THE POSSIBILITY OF RESTORATION.

Based on the evidence presented that Adams did not adequately meet the standards set by Dusky that he was not competent to stand trial, the District Court correctly found Adams was incompetent without the possibility of restoration and dismissed his charges without prejudice. I AA 197-98.

A district court's determination of competency after a competency evaluation is a question of fact that is entitled to deference on review. Calvin v. State, 122 Nev. 1178, 1182, 147 P.3d 1097, 1099 (2006). This Court has also stated that a determination will not be overturned if it is supported by substantial evidence. *Id.*

In Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 789 (1960), the United States Supreme Court provided that the appropriate standard for competency evaluation was whether the defendant "has

sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding [] and whether he has a rational as well as factual understanding of the proceedings against him.” The Nevada Supreme Court echoed the Dusky standard by explaining that “the test to be applied in determining competency is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational and factual understanding of the proceedings against him.” Jones v. State, 107 Nev. 632, 637, 817 P.2d 1179, 1182 (1991) (*citing* Melchor-Gloria v. State, 99 Nev. 174, 178-180, 660 P.2d 109, 113 (1983)). Similarly, this Court has concluded that an “incompetent defendant” is one who lacks “the present ability to understand either the nature of the criminal charges against him or the nature and purpose of the court proceedings, or is not able to aid and assist his counsel in the defendant at any time during the proceedings with a reasonable degree of rational understanding.” Olivares v. State, 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008).

Nevada has also set forth statutory standards when evaluating a defendant’s competency. Specifically, NRS 178.400 provides:

1. A person may not be tried or adjudged to punishment for a public offense while incompetent.
2. For the purposes of this section, “incompetent” means that the person does not have the present ability to:

- (a) Understand the nature of the criminal charges against the person;
- (b) Understand the nature and purpose of the court proceedings; or
- (c) Aid and assist the person's counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding.

When a reasonable doubt exists as to a defendant's competency, a hearing is statutorily and constitutionally required. Morales v. State, 116 Nev. 19, 22, 992 P.2d 252, 254 (2000). "The doubt mentioned in NRS 178.405 means doubt in the mind of the trial court, rather than counsel or others." Williams v. State, 85 Nev. 169, 174, 451 P.2d 848, 852 (1969). The trial court has discretion to determine whether such a doubt has been raised. Melchor-Gloria, 99 Nev. at 180, 660 P.2d at 113. However, a district court's decision regarding competency will be overturned if it is determined that the court abused its discretion. Tanksley v. State, 113 Nev. 844, 944 P.2d 240 (1997).

More recently, in Calvin, 122 Nev. at 1182, 147 P.3d at 1099, this Court evaluated whether the aforementioned factors of NRS 178.400(2) comply with the Dusky standard for evaluating a defendant's competency. The Court confirmed that the factors under NRS 178.400(2) comply with the governing Dusky standard and explained:

under Nevada statutory law a defendant is incompetent to stand trial if he *either* is not of sufficient mentality to be able to

understand the nature of the criminal charges against him or he is not able to aid and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter. Id. at 1182–83, 147 P.3d at 1100 (internal citation omitted). The Court further emphasized that conducting an accurate competency evaluation is imperative to ensure a defendant is competent to stand trial. Id. at 1183, 147 P.3d at 1100.

The District Court appropriately found that Adams was incompetent without the possibility of restoration on the basis that his neurological and cognitive defects impaired his ability improve on the Dusky prongs of being able to understand the nature and purpose of court proceedings and ability to aid and assist counsel during proceedings with a reasonable degree of understanding. This is a correct application of Dusky.

As the State set forth in their appeal, their witnesses agreed that Adams suffered from lifelong neurological and cognitive disabilities. The challenge hearing was conducted to determine to what extent those disabilities prevented Adams from being competent to stand trial.

The State's witnesses acknowledged that they did not conduct any neurological testing of any kind on Adams. The State's witnesses conceded that they did not conduct a direct observation of Adams interaction with counsel to evaluate his ability to aid and assist counsel within a reasonable degree of understanding during trial. Dr. Jones-Forrester's conducted

extensive neurological and cognitive testing and also conducted an hour plus long observation of Adams interaction with counsel prior to providing the court with an addendum to the neuropsychological evaluation. The State's conclusion that there was overwhelming evidence that Adams was competent to stand trial is based on their assertion that (3) licensed professionals determined he was competent versus Adams sole (1) professional testifying regarding his inability to meet the NRS and Dusky standard. In fact, all the licensed professionals that initially evaluated Adams found him not competent in referring him to Stein Hospital for restoration.

Based on Dr. Jones-Forrester's reports and testimony, the Court appropriately questioned the State's witnesses regarding Adams slippage in competency and what role his neurological and cognitive defect effected his ability to understand the proceedings and aid and assist defense counsel. Mr. Adams is functionally illiterate, low IQ and had deteriorated significantly since being returned to the Clark County Detention Center from Stein Hospital. This slippage was documented in the Dr. Jones-Forrester's addendum report.

The District Court appropriately found that Adams was incompetent without the possibility of restoration on the basis that his neurological and cognitive defects impaired his ability improve on the Dusky prongs of being

able to understand the nature and purpose of court proceedings and ability to aid and assist counsel during proceedings with a reasonable degree of understanding. This is a correct application of Dusky and not an abuse of discretion.

CONCLUSION

The District Court did not abuse its discretion in finding that Mr. Adams was incompetent without the possibility of restoration. As such, the State's appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 size font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more and contains 11 pages which does not exceed the 30 page limit.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 28th day of September, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of September, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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