

**COMPETENCE TO STAND TRIAL:
UNSUCCESSFUL BUT INSTRUCTIVE CASES**

Updated July 2009

I. UNITED STATES SUPREME COURT

***Indiana v. Edwards,*
128 S.Ct. 2379 (2008)**

The Constitution does not forbid States from insisting upon representation by counsel for those competent enough to stand trial but who suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.

***Godinez v. Moran,*
509 U.S. 389 (1993)**

The standard of competency for pleading guilty or waiving right to counsel is the same as the competency standard for standing trial.

***Medina v. California,*
505 U.S. 437 (1992)**

A state may constitutionally place the burden of proof upon the defendant in a competency hearing.

***Demosthenes v. Baal,*
495 U.S. 731 (1990)**

Federal habeas court may not overturn a state court's determination that a prisoner is competent to waive his right to pursue postconviction relief unless the determination is not fairly supported by the record.

***Maggio v. Fulford,*
462 U.S. 111 (1983)**

A state court's determination of competency is a factual matter and may not be overturned by a federal habeas court unless the determination is not fairly supported by the record.

II. U.S. COURTS OF APPEALS

United States v. Berry,
565 F.3d 385 (7th Cir. 2009)

Interpreting *Indiana v. Edwards* as applying only where competent defendant nevertheless suffers from “severe mental illness.”

Crawley v. Dinwiddie,
533 F.3d 1226 (10th Cir. 2008)

Petitioner was not entitled to habeas relief on his claim that trial counsel was ineffective for abiding by and advocating for petitioner’s desire to be found competent because no clearly established Supreme Court precedent supported his position. (At the competency trial, the appointed expert opined that petitioner was not competent and the prosecution argued to the jury that petitioner was incompetent. Defense counsel, who had requested the competency evaluation, suppressed his misgivings and argued petitioner’s position, i.e., that petitioner was competent.)

United States v. Jones,
495 F.3d 274 (6th Cir. 2007)

In a prosecution for being a felon in possession of a firearm, having found a reasonable cause to believe that the defendant was incompetent to stand trial as a result of his hearing disability, the district court was required by statute to grant the government's request for a hearing to determine the defendant's competency, rather than ruling that the defendant was incompetent without first holding a hearing.

Timberlake v. Davis,
409 F.3d 819 (7th Cir. 2005)

State procedural bar imposed on petitioner’s *Pate* claim did not foreclose federal review where the state rule that petitioner violated – *Pate* claim must be raised on direct appeal if the record supports it – post-dated petitioner’s appeal.

Lyons v. Luebbbers,
403 F.3d 585 (8th Cir. 2005)

Death row inmate procedurally defaulted claim that he was incompetent to stand trial by failing to raise it in post-conviction proceedings where he was represented by counsel who could have raised it. (The court also found that the claim failed on the merits.)

Rogers v. Gibson,
173 F.3d 1278 (10th Cir. 1999)

Claim that state violated due process by requiring petitioner to prove his incompetency by clear and convincing evidence (i.e., *Cooper* claim) was construed as a procedural due process claim. Standard for reviewing a claim that state court imposed an unconstitutional burden on a defendant at a competency hearing is the same as standard applied to claim where no competency hearing was conducted at all, i.e., whether there was a bona fide doubt about competency. *See also Walker v. Attorney General for the State of Okl.*, 167 F.3d 1339 (10th Cir. 1999); *West v. Gibson*, 1999 WL 339702 (10th Cir. 1999)(slip op.)(same); *Barnett v. Hargett*, 1999 WL 221513 (10th Cir.)(same).

Medina v. Singletary,
59 F.3d 1095 (11th Cir. 1995)

Medina's claim that he had a procedural due process right to a competency hearing was defaulted when he failed to raise it on direct appeal. His substantive due process claim that he was in fact incompetent while tried is not subject to procedural default, but Medina failed to demonstrate that the trial court's finding of competency was not fairly supported by the record.

Moran v. Godínez,
57 F.3d 690 (9th Cir. 1995)

Violation of due process not to hold competency hearing in connection with a change of plea, where court was aware that defendant was on medication, had attempted suicide three months earlier, and wanted to fire his attorneys, plead guilty to three counts of capital murder, and die. The violation was cured, however, by a state postconviction hearing conducted three years after the entry of the plea.

Weekley v. Jones,
56 F.3d 889 (8th Cir. 1995) (dictum)

In dictum, the author of the opinion argues that the fundamental miscarriage of justice exception will have to be broadened beyond "actual innocence" in the context of competency claims: "[T]he author ... envisions a case where failure to review a competency claim will result in a fundamental miscarriage of justice, even though the petitioner in fact committed the crime." *Id.* at 895 n.4.

Bolius v. Wainwright,
597 F.2d 986 (5th Cir. 1979)

In a retrospective competency hearing, the testimony of trial counsel and the prosecutor should be discounted. They would place themselves in an ethical dilemma if they admitted that they allowed defendant to plead guilty though they doubted his competency. Consequently, their testimony that they believed defendant to be competent should not be given much weight.

III. U.S. DISTRICT COURTS

Edgar v. Metrish,
2009 WL 152145 (E.D. Mich. Jan. 21, 2009)

Petitioner's absence at competency hearing held after petitioner had earlier been found to be incompetent to stand trial did not result in a constitutional violation. His presence was not necessary for a fair and just hearing on competency because his attorney represented him at the hearing, and it was clear from the forensic report that petitioner was stable and competent to stand trial.

United States v. May,
2008 WL 4974829 (D. Kan. Nov. 19, 2008) (unreported)

Although finding competent to stand trial the 61-year-old defendant who was in the beginning stages of dementia and who suffered from short term memory loss, anxiety and depression, the district court accepted the suggestions of the evaluating expert for certain accommodations for defendant during trial – “frequent breaks, ongoing monitoring of his sedation-causing medications, and questions and proceedings explained in simple terms.”

IV. STATE COURTS

In re Kotey M.,
965 A.2d 1146 (N.H. 2009)

A juvenile in a Child in Need of Services (CHINS) proceeding does not have a due process right to be deemed competent under the *Dusky* standard before being adjudicated a CHINS.

State v. Baumruk,
280 S.W.3d 600 (Mo. 2009)

Trial court did not err in capital murder prosecution in determining that defendant, though competent to stand trial, lacked the ability to voluntarily and intelligently elect to represent himself. Defendant himself had presented evidence showing that he suffered permanent brain damage from being shot twice in the head and from the medical treatment of the gunshot injuries. There was also expert testimony that defendant had significant memory loss and diminished insight and judgment. In addition, the trial court observed defendant's behavior at numerous pre-trial proceedings and reviewed pro se filings by defendant in which he sought to endorse witnesses who lacked any relevance to his trial.

Chadwick v. State,
277 S.W.3d 99 (Tex. App. 2009)

Trial court had sufficient evidence before it to determine that defendant was incompetent to represent himself under *Indiana v. Edwards* where defendant's arguments at times were incoherent.

Major v. Commonwealth,
275 S.W.3d 706 (Ky. 2009)

Trial court did not abuse its discretion by precluding borderline competent defendant from exercising complete right to self-representation and requiring counsel to provide representation for aspects of the trial defendant was not competent to handle.

State v. McNeil,
963 A.2d 358 (N.J. Super. A.D. 2009)

Evidence was sufficient to establish that, though defendant was competent to stand trial, he was not competent to represent himself, the position taken by the State's expert. (During extensive pretrial colloquies with the court, defendant explained that the indictment did not apply to him, that he was not subject to the laws or jurisdiction of the State, and that immunity had been bestowed upon him by God and based upon his foreign neutral status as a minister by decree of the Empress and the President of the United States.)

Hearn v. State,
3 So.3d 722 (Miss. 2008)

Even assuming that defendant had been incompetent to represent himself, although not incompetent to stand trial, reversal was not required because defendant received the

benefit of counsel through hybrid representation.

Florescu v. State,
623 S.E.2d 147 (Ga. App. 2005)

Defendant convicted of crime did not have to be mentally competent while his appellate counsel pursued motion for new trial.

Bradley v. United States,
881 A.2d 640 (D.C. 2005)

Issue of competency to enter guilty plea, raised in inmate's second motion to vacate sentence, was procedurally barred, as inmate had failed to raise it in his first motion to vacate sentence, and, in his second motion, he offered no excuse for his failure to include claim in his first motion, nor did he do so in his brief on appeal.

Commonwealth v. Santiago,
855 A.2d 682 (Pa. 2004)

Defendant's failure to raise, either before trial, at trial, or on direct appeal, issue of whether he was competent to stand trial on charge of first-degree murder with possible death sentence did not render competency issue waived for consideration on defendant's post-conviction petition, notwithstanding post-conviction waiver provision, since defendant, if incompetent at time of trial as he alleged post facto, could not have knowingly and intelligently waived his right to have trial court determine the issue (Per Cappy, C.J., with two Justices concurring and four Justices concurring in result).