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Feb 09 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DAVID ANTONIO LITTLE, JR.

APPELLANT

APPELLATE CASE NO. 2021-000990

Appeal from Chesterfield County

Honorable Roger M. Young, Circuit Court Judge

Opinion No. 2024-UP-033

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant would petition for rehearing per this Court's holding affirming the trial court's determination that appellant was mentally competent to stand trial because this Court might have overlooked the combined and cumulative aspects of appellant's actions at trial that when viewed as a whole showed that the competency finding was not supported by any evidentiary proof where appellant's bad behavior included 85 disruptive trial outbursts, 3 removals from the courtroom due to erratic behavior, and a litany of bizarre answers given when questioned about the judicial process. In support of this rehearing petition, counsel would submit the following points.

1. Appellant David Antonio Little, Jr. was convicted of three counts of assault on a police officer while resisting arrest per jury trial held during the July 2021 term of the Chesterfield County General Sessions Court before Judge Roger M. Young. Appellant was sentenced to three ten-year (concurrent) prison terms.
2. On March 9, 2021, Officers Marc Weiss, Spence Vaughn, and Clay Sikes were all involved in an attempt to place appellant back in his cell at the jail where he was being held subsequent to a verbal altercation that occurred with jail employees. During the attempt to detain appellant, each of the three officers were struck about their eyes by appellant. All three officers testified at trial. Tr. 122, l. 11 – p. 142, l. 14; Tr. 144, l. 21 – p. 153, l.5; Tr. 155, l. 12- p. 164, l.8.
3. On appeal, the following issue was presented to this Court:

The trial judge erred in finding appellant competent to stand trial following a pretrial Blair¹ hearing where prior to the hearing and throughout the trial there were at least 85 instances of appellant's disruptive outbursts toward the trial judge and witnesses (some of which were non-sensical and others which included profanity), and where appellant was removed from the courtroom three times due to his constant interruptions (including singing) during the trial, and where trial counsel objected to the state's competency finding because clearly appellant was not competent to stand.

¹ State v. Blair 275 5.6.529 273 S.E.2d 536 (1981).

85 INSTANCES OF IN-COURT BAD BEHAVIORAL OUTBURSTS

4. This Court ruled that appellant's bad behavioral outbursts at trial did not rise to the level of mental incompetence to stand trial in the case. Specifically, this Court's holding regarding the same follows:

See Burket v. Angelone, 208 F.3d 172, 192 (4th Cir. 2000) Neither low intelligence, mental deficiency, nor bizarre, volatile, and this irrational behavior can be equated with mental incompetence to stand trial. Battle v. United States, 419 F.3d 1292, 1299 (11th Cir. 2005) (noting "courtroom outbursts, odd behavior, and history of mental illness" did not "mandate a finding of incompetency"); cf. United States v. Neal, 776 F.3d 645, 657 (9th Cir. 2015) ("[C]ompetency will not be questioned when a defendant merely displays rude, uncooperative and sometimes wacky behavior."); Coleman, 871 F.3d at 477 ("[O]bstreperous' behavior 'does not cast doubt on [a defendant's] mental acumen; many a person with no defense would rather play games, and try to goad the judge into error, than face the music politely.'" (quoting United States v. James, 328 F.3d 953, 956 (7th Cir. 2003))).

5. Although outbursts in general may not denote mental incompetence, this Court might have overlooked the high volume of repeated instances of bad behavioral outbursts that totaled 85 occurrences of courtroom disruptions. Additionally, there were bad behavioral events from appellant that were so disturbing that he was removed from the courtroom on 3 separate occasions. Therefore, cumulatively speaking, the combined 85 instances of trial interferences from appellant, and the episodes of bad behavior from appellant that resulted in his ejections from the trial on 3 separate occasions altogether constituted ill behavior that signaled that he was mentally incompetent to stand trial.
6. The trial judge advised appellant that his outbursts would not be tolerated and that he would be removed if the outbursts continued. Tr. 77, 1.24-p.78, 1.3. Note that appellant was removed from the courtroom by the trial judge during the Blair hearing because of

his unruly behavior that included singing and talking rambling about “making up bullshit.” Tr. 60, l.12-22, Tr. 68, l.21-23. The trial judge had to remove appellant from the trial again (a second time) at the end of the first day of trial testimony before the videotape of the incident was played because he was rambling at the defense table. The trial judge’s remarks regarding this removal follow:

The Court: All right. Well, Mr. Little, you still don’t seem to be capable of sitting there and keeping your mouth shut. You don’t get to run commentary throughout the trial and you are disrupting the trial so I’m going to order that you be removed for the remainder of today. (Whereupon, the defendant is rambling at defense table)

The Court: I’m listening. I can hear you all way over here.

Mr. Little: She’s not objecting. What am I supposed to do? Not say nothing because she’s not doing her job. I want to stop for ineffective assistance of counsel because she’s not been doing her job.

The Court: Remove him from the courtroom. (Whereupon, the defendant is rambling as he’s leaving the courtroom)

Mr. Little: She ain’t been doing her job. She been lying the whole time. This whole trial has been fucking fucking three days. I ain’t know about the trial, three days. What the fuck. She’s been lying the whole time. I don’t do no lying. I’m gonna tell the truth, the whole truth and nothing but the truth so the truth is going to set me free. Is the truth going to set you free? I doubt it. Cameras don’t lie. March 8th, that’s when it happened. It was two guys. Not three. Not four.

The Court: We don’t have listen to this. Take him.

Mr. Little: Yeah, yeah, take him. Take him. Take him. You’re a banker representative. You probably work for Wells Fargo or Citibank. Probably Citibank. You fucking cruddy cracker. (Whereupon, the defendant is removed from the Courtroom) Tr. 100, l.4-P. 101, l.9.

Then, the trial judge placed his findings for the removals on the record as follows:

The Court: I'd just like to record to reflect that the defendant continues to chatter away both throughout the trial, to his lawyer, and outburst during the lawyer for the State asking questions. He just doesn't seem to be able to conform his behavior to his expectations that I set for him. So I'll give him another opportunity to come back tomorrow morning but right now we're just going to move on without him today. He does all right for a little bit and then he chooses not to. Tr. 102, 1.2-10.

Prior to sentencing, appellant rambled out loud verbally after being put out of the courtroom again (for a third time) due to another outburst. The trial judge summarized and commented on appellant's behavior at trial and how it impacted the case. Tr. 201, 1.21-23, 1.8.

The trial judge's comments follow:

Throughout the trial, obviously, there's been a question about whether or not he can control his conduct and whether or not he was competent to stand trial. We listen to Dr. Gaskin and gave his opinion that while he does suffer from a personality disorder mental illness classified as anti-social behavior, he, basically, has a very difficult personality but in Dr. Gaskin's opinion he knows exactly what he's doing and that these rantings about sovereign citizens are things that is capable of controlling. I note throughout the trial I gave him a number of warnings. I gave him quite a bit of lead way only when he just insisted on continuing ignoring my admonitions for him to keep quiet that I have him removed. Every time I had him removed he was able to then come back and sit there and be quiet many times for many minutes on into an hour at a time he was able to sit there, be quiet. Beginning with the jury selection on Monday he was, that's when I first began to believe that the doctor was one hundred percent correct in his assessment that he he chose – he is capable of conforming his conduct and that he was competent to stand trial and assistance of counsel – he just chose not to assist his counsel and despite her best efforts would often try to disrupt her. But it wasn't that it was uncontrollable on his part, it was, in fact, intentional on his part. His lawyer did a remarkable job in trying to represent him. And he simply showed that by his own conduct. He could shut up, he just chose not to. And there were opportunities like this morning he had promised that he would shut up and behave during the trial and he did for some point. But at some point during the testimony I noticed that whenever the testimony became adverse to him he would start

getting agitated and he would start wanting to act up and he often did that. I know there, at one point, there was an officer who was standing by and he seemed to want to direct his attention towards her. But once I ordered him not and she sat down, well, he sat down and quietly watched the trial. But there were times when he just wanted to put on a show for us. Every time I noted that, one time he wanted to play with cups and that was fine. If he wanted to sit there and show the jury what he thought he was contemptuous of their presence that's his choice, I suppose. But there was every opportunity he had to conform his conduct to what was expected and he often did, but then decided he would need to show us he was contemptuous of this court's proceedings and that he as he stated in the video and by his conduct stated "he didn't think he was subject to the law of the United States but rather of his own law". Tr. 203, l.13-p.205, l.10.

INABILITY TO CONSULT WITH COUNSEL

7. This Court ruled that appellant possessed the ability to consult with his attorney and held as follows:

"We hold the trial court did not err in finding [appellant] competent to stand trial because [appellant] had the ability to consult with his attorney.

Clearly, this Court overlooked the magnitude of counsel's insistence that appellant's mental status was incompetent, and that as a result it was impossible for appellant to communicate with him and assist with his defense. At the close of Dr. Gaskin's testimony, trial counsel objected to the finding of appellant's competency and informed the judge of appellant's uncooperative behavior. Tr. 67, l.16-23. Counsel's objection at the Blair hearing follows:

The Court: All right. [appellant's defense counsel] so did you have a chance to talk to your client?

Defense Counsel: Yes sir, I did.

The Court: And what do you have to report?

Defense Counsel: Your honor, at this time I don't think he's gonna be cooperative if he comes back in or, and he's not receptive to answering any questions about his competency.

The Court: Okay. So—now, what is your position on his competency---

Defense Counsel: I do not—

The Court: --and his ability to assist you?

Defense Counsel – I do not personally think that he has the ability to assist me in his defense.

The Court: For psychological reasons or behavioral reasons?

Defense Counsel: Well, I'm not, I'm not a psychiatrist or a psychologist. I don't know what's wrong with him, Your Honor. I guess he just has anti-social personality disorder, but I just haven't been successful in getting him to communicate with me in a meaningful way. But I understand, you know, that the doctor think that's because he chooses not to do so.

The Court: I guess that is the question, do you feel like he is choosing to act out in the manner that he does or is he incapable of conforming his behavior to what it is expected of him to sit during the trial?

Defense Counsel: I don't think he capable of sitting here quietly for the trial and I know---

The Court: And why is that?

Defense Counsel: Well, I know you couldn't hear him, your Honor, but he was talking and mumbling and singing the whole time we were picking the jury a while ago. And I find it very difficult to listen to the witness whose on the stand or listening to what's going on around me while he is talking, muttering, singing and making noises. So, basically, that's my personal opinion is that he is not able to control his behavior. Tr. 67, l.17-p.69, l.14.

Nevertheless, the trial judge ruled that appellant was “competent to stand trial and [could] assist his lawyer if he chose to and he [was] capable of sitting there and conforming his

behavior to the expectations of the court.” Tr. 77, lines 20-23. The trial judge went on to advise appellant that his outbursts would not be tolerated and that he would be removed if the outbursts continued. Tr. 77, 1.24-p.78, 1.3. Note that appellant was removed from the courtroom by the trial judge during the Blair hearing because of his unacceptable behavior which included singing and talking out loud in court Tr. 60, 1.12-22, Tr. 68, 1.21-23.

MISUNDERSTANDING OF THE JUDICIAL PROCESS

8. Also, appellant’s misunderstanding of the judicial process rendered him incompetent to stand trial in the case. This Court held that appellant “understood the nature and object of the proceedings, and had a rational and factual understanding of the proceedings against him.” In addition, this Court held as follows:

[Appellant] demonstrated an understanding of the judicial system throughout the proceedings, as shown by his identification of his attorney and of the nature of his charges; his inquiries about a bond hearing and the court’s jurisdiction; and his descriptions of the roles of the prosecutor, trial court, and trial counsel. *Cf. United States v. Coleman*, 871 F.3d 470, 477 (6th Cir. 2017) (explaining defendant’s challenge to the court’s jurisdiction over him demonstrated he understood the proceedings were criminal in nature); *U.S. ex rel. Forster v. DeRobertis*, 741 F.2d 1007, 1012 (7th Cir. 1984) (“Not every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges.”); *United States v. Gooch*, 595 F. App’x 524, 528 (6th Cir. 2014) (“An inability to communicate with counsel might be cause for concern. The *decision* not to speak to one’s lawyer is a defendant’s prerogative, not a sign of mental incompetence.”).

However, this Court may have overlooked portions of the record that belie the ruling that appellant understood the legal proceeding. Appellant testified during the Blair hearing and gave the following answers:

Defense Counsel: What is my role here today?

Appellant: Your role is to lie for me You are supposed to lie. Tr. 76, lines 13-15

Defense Counsel: You believe that all lawyers are liars?

Appellant: Yes. Good paid liars. Tr. 76, l.20-21.

Defense Counsel: Do you understand that when you're in a courtroom you have to sit quietly and you can't make outbursts if you want to stay in the courtroom?

Appellant: No I don't understand that. I stand over J. Tr. 77, lines Tr. 77, lines 4-7.

The test for determining competency to stand trial 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 as well as factual understanding of the proceeding against him. State v. Weik, 356 S.C. 76, 587 S.E.2d 683 (2003), citing to Dusky v. United States, 362 U.S. 402 (1960). Clearly, appellant's answers regarding the judicial process established that he misunderstood the judicial system and the role of counsel in connection in the case and his defense. For example, appellant stated that he believed the trial judge wanted to "hang him," and that his defense attorney was a paid liar who worked for the government and (not for him). Tr. 75, 1.8-p. 77, 1.3. This deranged stream of consciousness continued throughout the trial. Appellant stated that his attorney was "lying the whole time" at trial, and accused the trial judge of being a "banker representative." Tr. 100, 1.12-p. 101, 1.8. Appellant added he was not under his (trial judge's jurisdiction) and would not be put under "his d--," and that he would drop his "b--- on this world," and that "he (appellant) was the only king," and that the "IRS [wa]s your (judge) friend," and that the "Moors [were] the original people." Tr. 167, 1. 17 – p.172, 1. 25.

ANTI-SOCIAL PERSONALITY DISORDER

9. Also, this Court might have overlooked the gravity of appellant's specific mental illness highlighted in the case. A Blair hearing was held prior to trial. Dr. Matthew Gaskins of SCDMH testified that he examined appellant and found that he was competent to stand trial because he appropriately answered questions about the case, despite the fact that he was hostile and obstinate and not fully cooperative during the interview. Tr. 42, l.4-p. 47, l.10; Tr. 52, l.10-p.57, l.16. On cross-examination of Dr. Gaskins by appellant's trial counsel, it was revealed that during the interview, appellant told Dr. Gaskins that he believed it was the year 2000, and that the U.S. was part of Al Morocco, and that the U.S. government is a corporation, and that he (appellant) was God or sent by God or Allah the true God, and that he rambled on about the Moor Sovereign Citizenry. Dr. Gaskins hinted at appellant's possible anti-social personality disorder. Tr. 57, l.21-p. 64, l.13. In response to this obvious display of mental illness, this Court held as follows:

Finally, we hold [appellant's] assertions that, among other things, the trial was taking place in the country of "Al Morocco," and he was an "Asiatics Indigenous Native to this land," were the product of his adherence to Moor Sovereign Citizenry, rather than a delusion. While Moor Sovereign Citizenry is a fringe belief, believing in it does not indicate that one is incompetent. *Cf. Gooch*, 595 F. App'x at 527 ("[M]erely believing in fringe views does not mean someone cannot cooperate with his lawyer or understand the judicial proceedings around him."). Similarly, neither [appellant's] antisocial personality disorder diagnosis nor his hostility towards the trial court rendered him incompetent. See *Burket v. Angelone*, 208 F.3d 172, 192 (4th Cir. 2000)("[N]either low intelligence, mental deficiency, nor bizarre, volatile, and irrational behavior can be equated with mental incompetence to stand trial.");

The defendant bears the burden of proving his lack of competency by a preponderance of the evidence. State v. Reed 332 S.C.35, 503 S.E.2d 747 (1998). Moreover, a judge may assess the

competency issue based on a view of the defendant's demeanor at trial. State v. Weik, supra. Clearly, appellant's anti-social personality rendered him incompetent to stand trial.

SUMMARY

In the case at bar, where the trial judge had to remove appellant from the courtroom 3 times during the trial proceeding due to his outrageous outbursts and interruptions of the proceeding, and where appellant on 85 occasions either sang songs, mumbled, and outright verbally confronted the judge and witnesses with extreme disrespect and foul language to interrupt the trial, and where it was clear that appellant misunderstood the judicial process, and where the anti-social personality disorder was unmistakably apparent, then a cumulative assessment undoubtedly summed up appellant's incompetence to stand trial. However, despite the instances from the record that proved appellant's mental incompetence, this Court held as follows:

[T]he trial court's observations of [appellant's] behavior in court, as well as the forensic psychiatrist's testimony and evaluation, supported the trial court's finding of competency. See United States v. Locke, 269 F. App'x 292, 294 (4th Cir. 2008) ("Indicia of competence can include a defendant's behavior, [his] demeanor at trial, and any medical opinion on competence."); State v. Weik, 356 S.C. 76, 81, 587 S.E.2d 683, 685 (2002) (holding the trial court did not err when it determined the defendant was competent to stand trial based on the trial court's own observations and expert witness testimony).

CONCLUSION

WHEREFORE, based on the points listed above, counsel would request a rehearing on the question of appellants competency to stand trial.

Respectfully Submitted



WANDA H. CARTER
Deputy Chief Appellate Defender

This 9th day of February, 2024.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Roger M. Young, Circuit Court Judge

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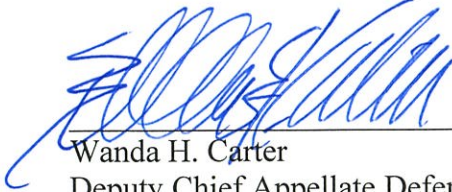
DAVID ANTONIO LITTLE, JR.

APPELLANT

APPELLATE CASE NO. 2021-000990

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on David A. Little, #385407, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 9th day of February, 2024.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

From: [Leverett, Scott](#)
To: [SC - FARTHING MARK](#)
Cc: [SC - COLLINS CAROLINE](#); [Carter, Wanda](#)
Subject: David A. Little - Petition for Rehearing - Appellate Case No. 2021-000990
Date: Friday, February 9, 2024 3:48:00 PM
Attachments: [David A. Little - Petition for Rehearing - Appellate Case No. 2021-000990.pdf](#)

Dear Mr. Farthing,

Attached please find a copy of the Petition for Rehearing in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Wanda Carter
Appellate Defense