

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable Howard P. King, Circuit Court

The State,

v,

Respondent

Gene David Evans Jr.

Appellant

Case No# 2018-000365

Brief of Appellant

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SC Court of Appeals

PRO-SE,

Gene David Evans Jr

Gene David Evans Jr

Lee Corr Inst 375509
990 Wisacky Hwy F7-60
Bishopville S.C. 29010

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That trial court refused to conduct competency hearing when competency determinations and documents from S.C.D.M.H (South Carolina Department of mental Health) would be holding a Hearing in front of the Probate Court. (see Attachments)
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Attachments — Probate papers

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Table of Authorities

* CASES

US v. Nickels 324 F3d 1250, 1251 (11th Cir 2003)

Trial Courts decision not to conduct competency examination Under §4241 is reviewed for abuse of discretion.

US v. McQuiston 998 F2d 627, 629 (8th Cir 1993)

reviewing trial Courts denial of additional psychiatric examinations for abuse of discretion

US v. Diabansat 94 F3d 527, 530 (9th Cir 1996)

Trial Court must grant authorization if defendant demonstrates that reasonably competent counsel would have required the assistance of the requested expert for a paying client and that lack of expert assistance would prejudice defense.

* US v. Olabansat 94 F3d 527, 530 (9th cir 1996)

Trial court must grant authorization if defendant demonstrates that reasonably competent counsel would have required the assistance of the requested expert for a paying client and that lack of expert assistance would prejudice defense.

Mata v. Johnson 210 F3d 324 332-333 (5th cir 2000)

Due process violated by failure to conduct competency hearing for defendant with history of mental health problems delusions, hunger strikes, and suicide attempts.

McGregor v. Gibson 248 F3d 946, 955 (10th cir 2001)

Due process violated by failure to hold hearing because of defendant's history of mental illness, inconsistent evidence that defendant was properly medicated through trial and contentions by counsel that defendant was able to assist defense.

1376 see or Drope 420 us at 183

Granting new trial when trial court refused to conduct competency hearing and emphasizing inherent difficulties in making retrospective competency determinations.

Competency to stand trial

The conviction of a legally incompetent defendant or the failure of a trial court to provide an adequate competency determination violates due process by depriving the defendant of his or her constitutional right to a fair trial.

1356 Drope - 420 U.S. 162, 178-83

Trial court's failure to make sufficient inquiry into defendant's competence and to give adequate weight to defendant's suicide attempt and other irrational behavior violated due process.

Pate v. Robinson 383 U.S. 375, 385-86 (1966) Trial court's failure to conduct competency hearing in light of defendant's pronounced irrational behavior violated due process.

1355 Incompetency differs from the insanity defense because it involves the defendant's mental state at the time of trial rather than the time of offense.

18 U.S.C. 17(2000) Lynch v. Overholser 369 U.S. 705 708-09 (1962)

Shafer v. Bowersox 329 F.3d 637, 652-53 (8th Cir 2003)

US v. Streater 70 F.3d 1314 1318 (DC Cir 1995) Guilty plea was not knowing and voluntary when induced by counsel's faulty legal advice regarding elements of possible defense. Ineffective assistance of counsel is discussed further in right to counsel in part III.

Statement of issue on Appeal

That the trial courts refuse to conduct competency hear, when competency determination and document from SCDMH (South Carolina department of Mental Health) would be holding a hearing in front of The Probate Court. There was a Guardian Ad Litem to be present.

Statement of the Case

A Sumter County grand jury indicted appellant Gene David Evans Sr., for felony driving under the influence with death resulting and on February 20, 2018, appellant was tried before the Honorable Howard P. King and a jury. R.1. John P. Meadors represented the state and Timothy L. Griffith represented appellant. R.1. The jury convicted appellant and Judge King sentenced to twelve years' imprisonment. R.370, 1.8-385, 1.17. This appeal follows.

Standard of Review

Trial Court failure to hold the hearing, Violated
Due Process for a defendant with history of
Mental Health problems. Mata v. Johnson 210 F3d
324 332-333. • Us v. Olabansat 94 F3d 527, 530. • •
US v. McQuiston 998 F2d 627, 629. • • •

Conclusion

For the foregoing reasons, this Court should reverse appellants conviction and remand this case for a new trial.

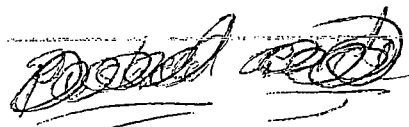
STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE PROBATE COURT

EX PARTE:
BRENDA FRAZIER
(Petitioner/Applicant)

NOTICE OF HEARING
APPOINTMENT OF COUNSEL
APPOINTMENT OF GUARDIAN AD LITEM
APPOINTMENT OF DESIGNATED EXAMINERS

IN THE MATTER OF:
GENE EVANS
(A Person Alleged to be Mentally Ill)



NOTICE OF HEARING

TO: Petitioner/Applicant - BRENDA FRAZIER
Person Alleged to be Mentally Ill - GENE EVANS
Counsel of Record - GENA P ERVIN
Guardian Ad Litem - GENA P ERVIN
Designated Examiners - MICHAEL FERLAUTO, MD
Other Interested Persons Know to the Court -

LYNN MERRITT, LMSW

GENE EVANS, SR.
JAMIE RABON

YOU ARE HEREBY NOTIFIED that, based on the Petition or Application filed in this matter and upon the report of the designated examiner or certificate of a licensed physician following an examination of the above-named person alleged to be mentally ill, finding that the said person is mentally ill, a hearing will be held on the 20th day of February, 2018 at 11:30AM at JUST CARE- CRAFTS-FARROW CAMPUS, COLUMBIA, SC, for the purpose of taking testimony as to the mental condition of said person alleged to be mentally ill, at which time you may appear, testify and within the discretion of the Court, present and cross-examine witnesses and have an opportunity to present to the court any and all relevant and material evidence bearing on this matter, appearing either in person or by counsel.

YOU ARE FURTHER NOTIFIED that the person's detention at JUST CARE-COLUMBIA, SC, a facility for the mentally ill is based on conclusions and the underlying facts as contained in either the Petition for Judicial Admission and Reports of Designated Examiners or the Application for Emergency Admission, the Certificate of Licensed Physicians, a copy of which is attached.

YOU ARE FURTHER NOTIFIED that you have the right to request the names of the designated examiners and such other persons who will be called to testify and the substance of their proposed testimony.

YOU ARE FURTHER NOTIFIED that it must be proved by the presentation of clear and convincing evidence that said person alleged to be mentally ill is mentally ill, needs treatment and because of his/her condition:

- * (1) Lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment; or
- * (2) There is a likelihood of serious harm to himself/herself or others.

TRUE COPY



JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

APPOINTMENT OF COUNSEL

IT IS HEREBY ORDERED that GENA P. ERVIN, esquire, Attorney of the South Carolina Bar, is hereby appointed as counsel of and for the person alleged to be mentally ill and is hereby charged with all the duties, responsibilities, powers and privileges conferred and made incumbent upon an Attorney at Law in such cases. Provided, however, that should a privately retained counsel be obtained by or for the said person alleged to be mentally ill and this Court is so notified, then, in that event, the aforesaid court-appointed counsel shall be discharged as counsel in this case.



IT IS ORDERED that GENA PERVIN who is capable of understanding the rights of the person alleged to be mentally ill and who has no interest in conflict with or adverse to the rights of the person alleged to be mentally ill, is hereby appointed Guardian ad Litem of said person alleged to be mentally ill for the purpose of appearing for and acting on behalf of said person in all the proceedings herein; the said Guardian Ad Litem having consented to act as Guardian Ad Litem for said person alleged to be mentally ill for the purpose of the above-entitled action.

EXAMINATION BY TWO DESIGNATED EXAMINERS

IT IS ORDERED that MICHAEL FERLAUTO, MD, a licensed physician and LYNN MERRITT, LMSW shall examine the person alleged to be mentally ill and report without delay to this Court their respective written findings as to the mental condition of said person alleged to be mentally ill and his/her need for treatment.

IT IS SO ORDERED.

Dated this 13TH day of FEBRUARY, 2018

Maurice Dugan (Seal)
Judge of Probate Court

DARLINGTON, SOUTH CAROLINA

ORDER OF SUBSTITUTION

The corresponding appointments listed above are hereby rescinded by the following substitute appointments:

Counsel: _____

Guardian Ad Litem: _____

Designated Examiner (Licensed Physician): _____

Designated Examiner: _____

_____ Date

_____ Judge of Probate Court

TRUE COPY
Maurice Dugan

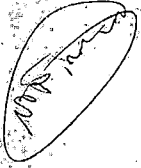
JUDGE OF PROBATE
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