SUPREME COURT OF THE UNITED STATES

No. 92–725

SALVADOR GODINEZ, WARDEN, PETITIONER *v.*
RICHARD ALLAN MORAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 24, 1993]

JUSTICE KENNEDY, with whom JUSTICE SCALIA joins, concurring in part and concurring in the judgment.

I am in full agreement with the Court's decision that the competency standard for pleading guilty and waiving the right to counsel is the same as the test of competency to stand trial. As I have some reservations about one part of the Court's opinion and take a somewhat different path to reach my conclusion, it is appropriate to make some further observations.

The Court compares the types of decisions made by one who goes to trial with the decisions required to plead guilty and waive the right to counsel. This comparison seems to suggest that there may have been a heightened standard of competency required by the Due Process Clause if the decisions were not equivalent. I have serious doubts about that proposition. In discussing the standard for a criminal defendant's competency to make decisions affecting his case, we should not confuse the content of the standard with the occasions for its application.

We must leave aside in this case any question of whether a defendant is absolved of criminal responsibility due to his mental state at the time he committed criminal acts and any later question about whether the defendant has the minimum competence necessary to undergo his sentence. What is at issue here is whether the defendant has sufficient competence to take part in a criminal proceeding and to make the decisions throughout its course. This is not to imply that mental competence is the only

aspect of a defendant's state of mind that is relevant during criminal proceedings. Whether the defendant has made a knowing, intelligent, and voluntary decision to make certain fundamental choices during the course of criminal proceedings is another subject of judicial inquiry. That both questions might be implicated at any given point, however, does not mean that the inquiries cease to be discrete. And as it comes to us, this case involves only the standard for determining competency.

This Court set forth the standard for competency to stand trial in *Dusky* v. *United States*, 362 U. S. 402 (1960) *(per curiam):* "[T]he `test must be 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.'" *Ibid.* In my view, both the Court of Appeals and respondent read "competency to stand trial" in too narrow a fashion. We have not suggested that the *Dusky* competency standard applies during the course of but not before trial. Instead, that standard is applicable from the time of arraignment through the return of a verdict. Although the *Dusky* standard refers to "ability to consult with [a] lawyer," the crucial component of the inquiry is the defendant's possession of "a reasonable degree of rational understanding." In other words, the focus of the *Dusky* formulation is on a particular level of mental functioning, which the ability to consult counsel helps identify. The possibility that consultation will occur is not required for the standard to serve its purpose. If a defendant elects to stand trial and to take the foolish course of acting as his own counsel, the law does not for that reason require any added degree of competence. See *ante*, at 10, n. 9.

The Due Process Clause does not mandate different standards of competency at various stages of or for different decisions made during the criminal proceedings. That was never the rule at common law, and it would take some extraordinary showing of the inadequacy of a single standard of competency for us to require States to employ heightened standards. See *Medina* v. *California*, 505 U. S. ___, ___ (1992) (slip op., at 8). Indeed, we should only overturn Nevada's use of a single standard if it "`offends some principle of justice so rooted in the traditions and conscience of our people as to be

ranked as fundamental.'" *Ibid.* (quoting *Patterson* v. *New York*, 432 U. S. 197, 202 (1977)).

The historical treatment of competency that supports Nevada's single standard has its roots in English common law. Writing in the 18th century, Blackstone described the effect of a defendant's incompetence on criminal proceedings:

> "[I]f a man in his sound memory commits a capital offence, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence?'' 4 W. Blackstone, Commentaries *24; accord, 1 M. Hale, Pleas of the Crown *34–*35.

Blackstone drew no distinction between madness for purposes of pleading and madness for purposes of going to trial. An English case arising in the Crown Court in 1865 indicates that a single standard was applied to assess competency at the time of arraignment, the time of pleading, and throughout the course of trial. See *Regina* v. *Southey*, 4 Fos. & Fin. 864, 872, n. a, 176 Eng. Rep. 825, 828, n. a (N. P. 1865) ("Assuming the prisoner to be insane at the time of arraignment, he cannot be tried *at all*, with or without counsel, for, even assuming that he has appointed counsel at a time when he was sane, it is not fit that he should be tried, as he cannot understand the evidence, nor the proceedings, and so is unable to instruct counsel, or to withdraw his authority if he acts improperly, as a prisoner may always do"); *id.*, at 877, n. a, 176 Eng. Rep., at 831, n. a ("if [the defendant] be so insane as not to understand the nature of the proceedings, he cannot plead").

A number of 19th century American cases also referred to insanity in a manner that suggested there was a single standard by which competency was to

be assessed throughout legal proceedings. See, *e.g.*, *Underwood* v. *People*, 32 Mich. 1, 3 (1875) ("insanity, when discovered, was held at common law to bar any further steps against a prisoner, at whatever stage of the proceedings''); *Crocker* v. *State*, 60 Wis. 553, 556, 19 N.W. 435, 436 (1884) ("At common law, if a person, after committing a crime, became insane, he was not arraigned during his insanity, but was remitted to prison until such incapacity was removed. The same was true where he became insane after his plea of not guilty and before trial"); *State* v. *Reed*, 41 La. 581, 582, 7 So. 132 (1889) ("It is elementary that a man cannot plead, or be tried, or convicted, or sentenced, while in a state of insanity"). See also 2 J. Bishop, Commentaries on Law of Criminal Procedure §§664, 667 (2d ed. 1872) ("a prisoner cannot be tried, sentenced, or punished" unless he is "mentally competent to make a rational defense").

Other American cases describe the standard by which competency is to be measured in a way that supports the idea that a single standard, parallel to that articulated in *Dusky*, is applied no matter what point during legal proceedings a competency question should arise. For example, in *Freeman* v. *People*, 4 Denio 2 (N. Y. 1847), it was held, "If . . . a person arraigned for a crime, is capable of understanding the nature and object of the proceedings going on against him; if he rightly comprehends his own condition in reference to such proceedings, and can conduct his defence in a rational manner, he is, for the purpose of being tried, to be deemed sane." *Id.*, at 24–25. Because the competency question was posed in *Freeman* at the time the defendant was to be arraigned, *id.*, at 19, the *Freeman* court's conception of competency to stand trial was that of a single standard to be applied throughout.

An even more explicit recitation of this common law

principle is found in *Hunt* v. *State*, 27 So. 2d 186 (Ala. 1946). In the course of the opinion in that case, there was a discussion of the common law rule regarding a defendant's competency to take part in legal proceedings:

> "The rule at common law . . . is that if at any time while criminal proceedings are pending against a person accused of a crime, the trial court either from observation or upon suggestion of counsel has facts brought to his attention which raise a doubt of the sanity of defendant, the question should be settled before further steps are taken. . . . The broad question to be determined then is whether the defendant is capable of understanding the proceedings and of making his defense, and whether he may have a full, fair and impartial trial." *Id.*, at 191 (citation omitted).

At common law, therefore, no attempt was made to apply different competency standards to different stages of criminal proceedings or to the variety of decisions that a defendant must make during the course of those proceedings. See *Commonwealth* v. *Woelfel*, 88 S. W. 1061, 1062 (Ky. 1905); *Jordan* v. *State*, 135 S. W. 327, 328–329 (Tenn. 1911); *State* v. *Seminary*, 115 So. 370, 371–372 (La. 1927); *State ex. rel. Townsend* v. *Bushong*, 146 Ohio St. 271, 272, 65 N. E. 2d 407, 408 (1946) *(per curiam); Moss* v. *Hunter*, 167 F. 2d 683, 684–685 (CA10 1948). Commentators have agreed that the common law standard of competency to stand trial, which parallels the *Dusky* standard, has been applied throughout criminal proceedings, not just to the formal trial. See H. Weihofen, Mental Disorder as a Criminal Defense 428–429, 431 (1954) ("It has long been the rule of the common law that a person cannot be required to plead to an indictment or be tried for a crime while he is so mentally disordered as to be incapable of making a rational defense"); B. Weiner, Mental Disability and the Criminal Law, in The Mentally

Disabled and the Law 695–696 (3d ed. 1985) ("It has traditionally been presumed that competency to stand trial means competency to participate in all phases of the trial process, including such pretrial activities as deciding how to plead, participating in plea bargaining, and deciding whether to assert or waive the right to counsel").

That the common law did not adopt heightened competency standards is readily understood when one considers the difficulties that would be associated with more than one standard. The standard applicable at a given point in a trial could be difficult to ascertain. For instance, if a defendant decides to change his plea to guilty after a trial has commenced, one court might apply the competency standard for undergoing trial while another court might use the standard for pleading guilty. In addition, the subtle nuances among different standards are likely to be difficult to differentiate, as evidenced by the lack of any clear distinction between a "rational understanding" and a "reasoned choice" in this case. See *ante*, at 8.

It is true, of course, that if a defendant stands trial instead of pleading guilty, there will be more occasions for the trial court to observe the condition of the defendant to determine his mental competence. Trial courts have the obligation of conducting a hearing whenever there is sufficient doubt concerning a defendant's competence. See *Drope* v. *Missouri*, 420 U. S. 162, 180–181 (1975). The standard by which competency is assessed, however, does not change. Respondent's counsel conceded as much during oral argument, making no attempt to defend the contrary position of the Court of Appeals. See, *e.g.*, Tr. of Oral Arg. 22 ("This is not a case of heightened standards"); *id.*, at 31 ("We didn't argue a heightened standard. We did not argue a heightened standard to the Ninth Circuit, nor did we necessarily argue a heightened standard at

any juncture in this case"); *id.*, at 33 ("Due process does not require this higher standard, but requires a separate inquiry").

A single standard of competency to be applied throughout criminal proceedings does not offend any "`principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Medina*, 505 U. S., at ___ (slip op., at 8). Nothing in our case law compels a contrary conclusion, and adoption of a rule setting out varying competency standards for each decision and stage of a criminal proceeding would disrupt the orderly course of trial and, from the standpoint of all parties, prove unworkable both at trial and on appellate review.

I would avoid the difficult comparisons engaged in by the Court. In my view, due process does not preclude Nevada's use of a single competency standard for all aspects of the criminal proceeding. Respondent's decision to plead guilty and his decision to waive counsel were grave choices for him to make, but as the Court demonstrates in Part II–B, there is a heightened standard, albeit not one concerned with competence, that must be met before a defendant is allowed to make those decisions.

With these observations, I concur in the judgment and in Parts I, II–B, and III of the Court's opinion.