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 BLACKMUN, with whom JUSTICE STEVENS joins, dissenting.

Today, the majority holds that a standard of competence designed to measure a defendant's ability to consult with counsel and to assist in preparing his defense is constitutionally adequate to assess a defendant's competence to waive the right to counsel and represent himself. In so doing, the majority upholds the death sentence for a person whose decision to discharge counsel, plead guilty, and present no defense well may have been the product of medication or mental illness. I believe the majority's analysis is contrary to both common sense and longstanding case law. Therefore, I dissent.

As a preliminary matter, the circumstances under which respondent Richard Allan Moran waived his right to an attorney and pleaded guilty to capital murder bear elaboration. For, although the majority's exposition of the events is accurate, the most significant facts are omitted or relegated to footnotes.

In August 1984, after killing three people and wounding himself in an attempt to commit suicide, Moran was charged in a Nevada state court with three counts of capital murder. He pleaded not guilty to all charges, and the trial court ordered a psychiatric evaluation. At this stage, Moran's competence to represent himself was not at issue.

The two psychiatrists who examined him therefore focused solely upon his capacity to stand trial with the assistance of counsel. Dr. Jack A. Jurasky found Moran to be "in full control of his faculties insofar as his ability to aid counsel, assist in his own defense, recall evidence and to give testimony if called upon to do so." App. 8. Dr. Jurasky, however, did express some reservations, observing: "Psychologically, and perhaps legally speaking, this man, because he is expressing and feeling considerable remorse and guilt, may be inclined to exert less effort towards his own defense." *Ibid.* Nevertheless, under the circumstances, Dr. Jurasky felt that Moran's depressed state of mind was not "necessarily a major consideration." *Ibid.* Dr. William D. O'Gorman also characterized Moran as "very depressed," remarking that he "showed much tearing in talking about the episodes that led up to his present incarceration, particularly in talking about his ex-wife." *Id.*, at 15–16. But Dr. O'Gorman ultimately concluded that Moran "is knowledgeable of the charges being made against him" and "can assist his attorney, in his own defense, if he so desires." *Id.*, at 17.

In November 1984, just three months after his suicide attempt, Moran appeared in court seeking to discharge his public defender, waive his right to counsel, and plead guilty to all three charges of capital murder. When asked to explain the dramatic change in his chosen course of action, Moran responded that he wished to represent himself because he opposed all efforts to mount a defense. His purpose, specifically, was to prevent the presentation of any mitigating evidence on his behalf at the sentencing phase of the proceeding. The trial judge inquired whether Moran was "presently under the influence of any drug or alcohol," and Moran replied: "Just what they give me in, you know, medications." *Id.*, at 33. Despite Moran's affirmative answer, the trial judge failed to question him further

regarding the type, dosage, or effect of the "medications" to which he referred. Had the trial judge done so, he would have discovered that Moran was being administered simultaneously four different prescription drugs—phenobarbital, dilantin, inderal, and vistaril. Moran later testified to the numbing effect of these drugs, stating: "I guess I really didn't care about anything . . . . I wasn't very concerned about anything that was going on . . . as far as the proceedings and everything were going." *Id.*, at 92.[1]

Disregarding the mounting evidence of Moran's disturbed mental state, the trial judge accepted Moran's waiver of counsel and guilty pleas after posing a series of routine questions regarding his understanding of his legal rights and the offenses, to which Moran gave largely monosyllabic answers. In a string of affirmative responses, Moran purported to acknowledge that he knew the import of waiving his constitutional rights, that he understood the charges against him, and that he was, in fact, guilty of those charges. One part of this exchange, however, highlights the mechanical character of Moran's answers to the questions. When the trial judge asked him whether he killed his ex-wife "deliberately, with premeditation and malice aforethought," Moran unexpectedly responded: "No. I didn't do it—I mean, I wasn't looking to kill her, but she ended up dead."

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[1]Moran's medical records, read in conjunction with the Physician's Desk Reference (46 ed. 1992), corroborate his testimony concerning the medications he received and their impact upon him. The records show that Moran was administered dilantin, an anti-epileptic medication that may cause confusion; inderal, a beta-blocker anti-arrhythmic that may cause light-headedness, mental depression, hallucinations, disorientation, and short-term memory loss; and vistaril, a depressant that may cause drowsiness, tremors, and convulsions. App. 97–98.

Id., at 58. Instead of probing further, the trial judge simply repeated the question, inquiring again whether Moran had acted deliberately. Once again, Moran replied: "I don't know. I mean, I don't know what you mean by deliberately. I mean, I pulled the trigger on purpose, but I didn't plan on doing it; you know what I mean?" *Id.*, at 59. Ignoring the ambiguity of Moran's responses, the trial judge reframed the question to elicit an affirmative answer, stating: "Well, I've previously explained to you what is meant by deliberation and premeditation. Deliberate means that you arrived at or determined as a result of careful thought and weighing the consideration for and against the proposed action. Did you do that?" This time, Moran responded: "Yes." *Ibid.*

It was only after prodding Moran through the plea colloquy in this manner that the trial judge concluded that he was competent to stand trial and that he voluntarily and intelligently had waived his right to counsel. Accordingly, Moran was allowed to plead guilty and appear without counsel at his sentencing hearing. Moran presented no defense, called no witness, and offered no mitigating evidence on his own behalf. Not surprisingly, he was sentenced to death.

It is axiomatic by now that criminal prosecution of an incompetent defendant offends the Due Process Clause of the Fourteenth Amendment. See *Medina* v. *California*, ___ U. S. ___ (1992); *Riggins* v. *Nevada*, ___ U. S. ___ (1992) (KENNEDY, J., concurring); *Drope* v. *Missouri*, 420 U. S. 162, 171 (1975); *Pate* v. *Robinson*, 383 U. S. 375, 378 (1966). The majority does not deny this principle, nor does it dispute the standard that has been set for competence to stand trial with the assistance of counsel: whether the accused possesses "the capacity to understand the nature and object of the proceedings against him, to consult with

counsel, and to assist in preparing his defense." *Drope*, 420 U. S., at 171. Accord, *Dusky* v. *United States*, 362 U.S. 402 (1960). My disagreement with the majority turns, then, upon another standard—the one for assessing a defendant's competence to waive counsel and represent himself.

The majority "reject[s] the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from)" the standard for competence to stand trial articulated in *Dusky* and *Drope*. *Ante*, at 8. But the standard for competence to stand trial is specifically designed to measure a defendant's ability to "consult with counsel" and to "assist in preparing his defense." A finding that a defendant is competent to stand trial establishes only that he is capable of aiding his attorney in making the critical decisions required at trial or in plea negotiations. The reliability or even relevance of such a finding vanishes when its basic premise—that counsel will be present—ceases to exist. The question is no longer whether the defendant can proceed with an attorney, but whether he can proceed alone and uncounselled. I do not believe we place an excessive burden upon a trial court by requiring it to conduct a specific inquiry into that question at the juncture when a defendant whose competency already has been questioned seeks to waive counsel and represent himself.

The majority concludes that there is no need for such a hearing because a defendant who is found competent to stand trial with the assistance of counsel is, *ipso facto*, competent to discharge counsel and represent himself. But the majority cannot isolate the term "competent" and apply it in a vacuum, divorced from its specific context. A person who is "competent" to play basketball is not thereby "competent" to play the violin. The majority's monolithic approach to competency is true to neither life nor the law. Competency for one purpose does

not necessarily translate to competency for another purpose. See Bonnie, The Competence of Criminal Defendants: A Theoretical Reformulation, 10 Behav. Sci. & L. 291, 299 (1992); R. Roesch & S. Golding, Competency to Stand Trial 10–13 (1980). Consistent with this commonsense notion, our cases always have recognized that "a defendant's mental condition may be relevant to more than one legal issue, each governed by distinct rules reflecting quite different policies." *Drope*, 420 U. S., at 176. See *Jackson* v. *Indiana*, 406 U. S. 715, 739 (1972). To this end, this Court has required competency evaluations to be specifically tailored to the context and purpose of a proceeding. See *Rees* v. *Peyton*, 384 U. S. 312, 314 (1966) (directing court "to determine petitioner's mental competence in the present posture of things").

In *Massey* v. *Moore*, 348 U. S. 105, 108 (1954), for example, the Court ruled that a defendant who had been found competent to stand trial with the assistance of counsel should have been given a hearing as to his competency to represent himself because "[o]ne might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without the benefit of counsel."[2] And in *Westbrook* v. *Arizona*, 384 U. S. 150 (1966), the Court reiterated the requirement that the determination of a defendant's competency be tailored to the particular capacity in question, observing: "Although petitioner received a hearing on the issue of his competence to stand trial, there

[2]The majority's attempt to distinguish *Massey* as a pre-*Gideon* case, *ante*, at 10, n. 10, is simply irrelevant. For, as the majority itself concedes, *Massey* stands only for the proposition that the two inquiries are different—competency to stand trial with the assistance of counsel is not equivalent to competency to proceed alone.

appears to have been no hearing or inquiry into the issue of his competence to waive his constitutional right to the assistance of counsel and to proceed, as he did, to conduct his own defense." See also *Medina*, ___ U. S., at ___ (distinguishing between a claim of incompetence and a plea of not guilty by reason of insanity); *Riggins*, ___ U. S., at ___ (KENNEDY, J., concurring) (distinguishing between functional competence and competence to stand trial).

Although the Court never has articulated explicitly the standard for determining competency to represent oneself, it has hinted at its contours. In *Rees* v. *Peyton*, *supra*, it required an evaluation of competence that was designed to measure the abilities necessary for a defendant to make a decision under analogous circumstances. In that case, a capital defendant who had filed a petition for certiorari ordered his attorney to withdraw the petition and forgo further legal proceedings. The petitioner's counsel advised the Court that he could not conscientiously do so without a psychiatric examination of his client because there was some doubt as to his client's mental competency. Under those circumstances, this Court directed the lower court to conduct an inquiry as to whether the defendant possessed the "capacity to appreciate his position and make a *rational choice* with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises" (emphasis added). 384 U. S., at 314. Certainly the competency required for a capital defendant to proceed *without the advice of counsel* at trial or in plea negotiations should be no less than the competency required for a capital defendant to proceed *against the advice of counsel* to withdraw a petition for certiorari. The standard applied by the Ninth Circuit in this case—the "reasoned choice" standard—closely approximates

the "rational choice" standard set forth in *Rees*.[3]

Disregarding the plain language of *Westbrook* and *Massey*, the majority in effect overrules those cases *sub silentio*.[4] From the constitutional right of self-representation established in *Faretta* v. *California*, 422 U. S. 806 (1975), the majority extrapolates that "a criminal defendant's ability to represent himself has no bearing upon his competence to *choose* self-representation." *Ante*, at 10. But *Faretta* does not confer upon an *incompetent* defendant a constitutional right to conduct his own defense. Indeed, Faretta himself was "literate, competent, and understanding," and the record showed that "he was voluntarily exercising his informed free will." 422 U. S., at 835. "Although a defendant need not himself have the skill and experience of a lawyer," *Faretta*'s right of self-representation is confined to those who

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[3]According to the majority, "there is no indication . . . that the phrase [`rational choice'] means something different from `rational understanding.'" *Ante*, at 8, n. 9. What the majority fails to recognize is that, in the distinction between a defendant who possesses a "rational understanding" of the proceedings and one who is able to make a "rational choice," lies the difference between the capacity for passive and active involvement in the proceedings.

[4]According to the majority, "*Westbrook* stands only for the unremarkable proposition" that a determination of competence to stand trial is not sufficient to waive the right to counsel; "the waiver must also be intelligent and voluntary before it can be accepted." *Ante*, at 12. But the majority's attempt to transform a case about the competency to waive counsel into a case about the voluntariness of a waiver needlessly complicates this area of the law. Perhaps competence to waive rights is incorporated into a voluntariness inquiry, but there is no necessary link between the two concepts.

are able to choose it "competently and intelligently." *Ibid.* The *Faretta* Court was careful to emphasize that the record must establish that the defendant "`knows what he is doing and his choice is made with eyes open.'" *Ibid.*, quoting *Adams* v. *United States ex rel. McCann*, 317 U. S. 269, 279 (1942).

The majority asserts that "the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself." *Ante*, at 9. But this assertion is simply incorrect. The majority's attempt to extricate the competence to waive the right to counsel from the competence to represent oneself is unavailing, because the former decision necessarily entails the latter. It is obvious that a defendant who waives counsel must represent himself. Even Moran, who pleaded guilty, was required to defend himself during the penalty phase of the proceedings. And a defendant who is utterly incapable of conducting his own defense cannot be considered "competent" to make such a decision, any more than a person who chooses to leap out of a window in the belief that he can fly can be considered "competent" to make such a choice.

The record in this case gives rise to grave doubts regarding respondent Moran's ability to discharge counsel and represent himself. Just a few months after he attempted to commit suicide, Moran essentially volunteered himself for execution: he sought to waive the right to counsel, to plead guilty to capital murder, and to prevent the presentation of any mitigating evidence on his behalf. The psychiatrists' reports supplied one explanation for Moran's self-destructive behavior: his deep depression. And Moran's own testimony suggested another: the fact that he was being administered simultaneously four different prescription medications. It has been recognized that such drugs often possess side effects that may "compromise the

right of a medicated criminal defendant to receive a fair trial . . . by rendering him unable or unwilling to assist counsel." *Riggins*, ___ U. S., at ___ (KENNEDY, J., concurring) (slip op., at 4). Moran's plea colloquy only augments the manifold causes for concern by suggesting that his waivers and his assent to the charges against him were not rendered in a truly voluntary and intelligent fashion. Upon this evidence, there can be no doubt that the trial judge should have conducted another competency evaluation to determine Moran's capacity to waive the right to counsel and represent himself, instead of relying upon the psychiatrists' reports that he was able to stand trial with the assistance of counsel.[5]

To try, convict, and punish one so helpless to defend himself contravenes fundamental principles of fairness and impugns the integrity of our criminal justice system. I cannot condone the decision to accept, without further inquiry, the self-destructive "choice" of a person who was so deeply medicated and who might well have been severely mentally ill. I dissent.

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[5]Whether this same evidence implies that Moran's waiver of counsel and guilty pleas were also involuntary remains to be seen. Cf. *Miller* v. *Fenton*, 474 U. S. 104 (1985) (voluntariness is a mixed question of law and fact entitled to independent federal review).