

IMPORTANT NOTICE **NOT TO BE PUBLISHED OPINION**

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: JANUARY 25, 2007
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2006-SC-000397-MR

&

2005-SC-000342-MR

DATE Feb 15, 07 E.A. Groun, Jr. DC.

OLIVER HINKLE

APPELLANT

APPEAL FROM KNOX CIRCUIT COURT
HON. WILLIAM T. CAIN, SPECIAL JUDGE
INDICTMENT NO. 2003-CR-00025

V.

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

Affirming

A jury of the Knox Circuit Court convicted Appellant, Oliver Hinkle, of the intentional murder of his estranged wife. For this crime, Appellant was sentenced to twenty years' imprisonment. Appellant appealed as a matter of right, and on February 23, 2006, this Court remanded Appellant's case to the Knox Circuit Court for a determination as to whether a retrospective competency hearing was constitutionally permissible. Hinkle v. Commonwealth, 2005-SC-342 (rendered February 23, 2006). On April 21, 2006, the Knox Circuit Court issued an Opinion and Order finding that a retrospective competency hearing was constitutionally permissible and that Appellant was competent at the time of his February 2005 trial. Appellant now appeals this order; and for the reasons set forth herein, we affirm.

Appellant contends the trial court erred to his substantial prejudice when it determined that a retrospective competency hearing was constitutionally permissible. In Thompson v. Commonwealth, 147 S.W.3d 22 (Ky. 2004), we stated that "[t]he test to be applied in determining whether a retrospective competency hearing is permissible is whether the quantity and quality of available evidence is adequate to arrive at an assessment that could be labeled as more than mere speculation." Id. at 32 (quoting Thompson v. Commonwealth, 56 S.W.3d 406, 409 (2001)). "[F]actors bearing on the constitutional permissibility of a retrospective hearing include: (1) the length of time between the retrospective hearing and the trial; (2) the availability of transcript or video record of the relevant proceedings; (3) the existence of mental examinations conducted close in time to the trial date; and (4) the availability of the recollections of non-experts-including counsel and the trial judge-who had the ability to observe and interact with the defendant during trial." Id.

In this case, Appellant was evaluated in February 2004 by Dr. Steven Simon, a psychologist at the Kentucky Correctional Psychiatric Center ("KCPC"). Dr. Simon opined that Appellant was competent to stand trial at that time, and that Appellant's condition did not present a "close call" on the issue of competency. Dr. Simon also testified that absent any substantial changes or problems, he would expect Appellant to have remained competent at the time of his February 2005 trial. Appellant's trial counsel also expressed an opinion that Appellant was competent to stand trial and further offered to stipulate the findings in Dr. Simon's report. Finally, a video record exists of all relevant proceedings in

this case and nothing in the record suggests or infers that Appellant may be incompetent.

Upon review, we agree with the trial court that sufficient evidence was available to conduct a meaningful competency hearing on remand. Appellant principally complains that Dr. Simon's report is irrelevant and unreliable since it was based on Appellant's condition approximately one year prior to trial. While we agree that the weight of Dr. Simon's report is diminished due to this considerable delay, we do not find such a delay to render the report completely useless. Dr. Simon testified that Appellant's competency status was unlikely to have changed between the time of his evaluation and Appellant's trial, especially in light of the fact that Appellant's competency status was not a "close call." Moreover, the trial court was able to review other evidence, such as opinions made by Appellant's trial counsel and the video record. In light of the quantity and quality of this substantial evidence, we find no error on the part of the trial court.

We also reject Appellant's argument that there was not substantial evidence to support a finding that Appellant was competent to stand trial in February 2005. The standard for competency 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 proceedings against him." Thompson, supra at 32 (citation omitted). In this case, the evidence is more than sufficient to support a finding of competency at the time of Appellant's February 2005 trial.

For the reasons set forth herein, the April 21, 2006 order of the Knox Circuit Court is affirmed.

All concur.

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