

Competency Does Not Always Mean Competency, According to the Supreme Court

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Just when you thought you knew what the legal definition of competency was – or, more accurately, what the definitions are – the Supreme Court has once again changed the way the courts view defendants with possible mental illness. Previously, the main competency evaluations were competency to stand trial and competency to assist counsel defending the case. Now, with the *Indiana v. Edwards*¹ holding, another level of review has been added – competency to act *pro se*.

The Right to Self-Representation And Competency Standards Pre-*Edwards*

The Court has previously reviewed the right to waive counsel and corresponding right to self-representation, the standard for competency to stand trial, and the standard for competency to waive counsel.

The seminal case on self-representation, *Faretta v. California*, was decided by the Supreme Court in 1975. The issue on appeal to the Supreme Court was whether a state criminal defendant had a constitutional right to proceed to trial without counsel.² As noted by Justice Stewart in the opinion, it was clear that the Sixth and Fourteenth Amendments provide Faretta the constitutional right to assistance of counsel, but the law was less clear on whether he could turn down the offered assistance.³

Faretta was charged with grand theft and was assigned a public defender. Faretta requested that he be able to represent himself at least in part because he felt the public defender had too high a caseload to devote himself to Faretta's case. The judge questioned Faretta and told him that he would not receive any special treatment if he proceeded without counsel.⁴ Although Faretta was able to answer the judge's questions, the judge still did not accept his waiver, ruling that the waiver was not made knowingly and intelligently.⁵ Faretta appealed unsuccessfully, and the case made its way to the Supreme Court.⁶

The Supreme Court referenced the federal statute protecting the right to self-representation and discussed several cases that supported a constitutional right to self-representation. The Court also noted that the right of self-representation can be seen in the structure of the Sixth Amendment and English common law.⁷ The Court found the language in the Sixth Amendment – referring to the assistance of counsel – supported the

¹ *Indiana v. Edwards*, 128 S.Ct. 2379, 2381-2383 (2008).

² *Faretta v. California*, 422 U.S. 806, 807 (1975).

³ *Id.*

⁴ *Id.* at 807-808.

⁵ *Id.* at 808-811.

⁶ *Id.* at 811-812.

⁷ *Id.* at 812-818.

right to proceed without such “assistance” as it was still the defendant who should direct the defense.⁸

The *Faretta* Court concluded that a defendant may proceed without counsel upon knowingly and intelligently waiving his right to counsel.⁹

The standard of competency required to be found fit to proceed to trial was established in *Dusky v. United States*. The Court held that, to be found competent, the defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “a rational as well as factual understanding of the proceedings against him.”¹⁰

In its opinion in *Godinez v. Moran*, the Supreme Court reviewed the standard of competency for pleading guilty and the standard for waiving the right to counsel. The defendant had pleaded not guilty to three counts of first-degree murder and was found competent to stand trial. The defendant later requested to waive counsel and plead guilty. The lower court found that his waiver of counsel was knowingly and intelligently made and allowed him to change his pleas.¹¹ Further questions of defendant’s competency were later raised, involving the issue of whether competency to plead guilty required a different standard of competency from that required to waive counsel. It was on that question that the Supreme Court granted certiorari.¹²

The Court reviewed its *Dusky* decision in which the level of competency required to stand trial was established. The *Godinez* Court rejected the notion that there is a different standard required to waive constitutional rights than there is to stand trial. Any such waivers must be made knowingly and voluntarily, but there is no separate standard of competence.¹³

The *Edwards* Decision

It is with this background that the *Edwards* Court reviewed the question of whether a defendant who is found competent to stand trial may be required to meet a different standard of competency in order to represent himself at trial.

Justice Breyer, joined by Chief Justice Roberts and Justices Stevens, Kennedy, Souter, Ginsburg, and Alito, delivered the majority opinion. Edwards drew and fired a gun after a store security officer discovered that he had attempted to steal a pair of shoes. Procedurally, Edwards underwent three competency hearings, two trials, and two determinations of his right to self-representation.¹⁴ At both criminal trials, he was found

⁸ *Id.* at 819-820.

⁹ *Id.* at 835.

¹⁰ *Dusky v. United States*, 362 U.S. 402, 402 (1960).

¹¹ *Godinez v. Moran*, 509 U.S. 389, 391-393 (1993).

¹² *Id.* at 393-396.

¹³ *Id.* at 396-400.

¹⁴ *Indiana*, *supra* note 1 at 2381-2383.

competent to stand trial but not to represent himself. Edwards appealed, and the case made its way to the Supreme Court.¹⁵

The Court reviewed the relevant precedent, including the cases discussed above, and found that none answered the question at issue.¹⁶ The Court noted that mental illness “itself is not a unitary concept,” which suggested a single standard for competency to go to trial and competency to proceed *pro se* may be inappropriate.¹⁷ The Court also questioned whether allowing mentally ill defendants to represent themselves would undermine their dignity and result in a spectacle rather than a fair trial.¹⁸ Therefore, the Court held that the Constitution supports a higher competency standard for proceeding *pro se* than for proceeding to trial with representation. The Court did not, however, endorse Indiana’s proposed standard for self-representation competency, not did it propose its own.¹⁹

Justice Scalia wrote a dissenting opinion, in which Justice Thomas joined. The main thrust of Scalia’s opinion was that the Constitution grants to right to a defendant who knowingly and voluntarily waives the right to counsel to represent himself, and there is no leeway in that right for the state to substitute its own judgment for the defendant’s with respect to the right to counsel.²⁰

Scalia noted that the trial judge explicitly found Edwards’ waiver of counsel to be made knowingly and voluntarily at each trial, but the lower court chose to create a higher standard of competency for self-representation.²¹

Under the *Faretta* decision, the state can not force a lawyer on a criminal defendant who does not want one. Scalia found no justification to carve out an exception based on the defendant’s psychiatric condition and/or history as long as the *Dusky* standard is met and the waiver of counsel is knowing and voluntary. He further questioned the Courts paternalism in discussing the question of the defendant’s dignity and its willingness to set a higher standard based on an appearance of a “less fair” trial.²² He stated, “At a time when all society is trying to mainstream the mentally impaired, the Court permits them to be deprived of a basic constitutional right – for their own good.”²³ Scalia also noted that the majority’s failure to establish a standard for determining competency to proceed *pro se* “makes a bad holding worse.”²⁴

Conclusion

¹⁵ *Id.* at 2382-2383.

¹⁶ *Id.* at 2383-2385.

¹⁷ *Id.* at 2386.

¹⁸ *Id.* at 2387.

¹⁹ *Id.* at 2387-2388.

²⁰ *Id.* 2389.

²¹ *Id.* at 2389-2390.

²² *Id.* at 2390-2394.

²³ *Id.* at 2394.

²⁴ *Id.*

Sometimes you just have to give Scalia his due. In his dissent, he brings to light the main discrepancies in the majority's analysis of precedent and the potential harm caused to defendants and the criminal justice system in general by this vague and utterly unhelpful ruling. The law post-*Edwards* is now clear that there is a higher standard for self-representation when proceeding to trial, but there is no guidance at all as to what that higher standard is. The Supreme Court has in effect used paternalistic reasoning to provide unfettered discretion to lower courts to determine which defendants may proceed without counsel. *Edwards* allows a trial judge to find a defendant is incompetent to proceed *pro se* for any reason whatsoever, as long as it can be tied to competency. Asking the defendant a detailed legal question even a criminal defense lawyer could not answer without conducting some research is now sufficient to deny someone a constitutional right. The majority of the Court may not see the danger here, but anyone who believes in our legal system must and should be afraid of where this highly questionable opinion will take us.

This decision is problematic not only because it allows paternalism to rule judicial decisions. It also allows paternalism to override other legal decisions – not only in that it allows judges to decide someone is not competent to represent himself based on a mental health history, but in that it limits the ability of someone with a mental health history to rid herself of an attorney who refuses to listen to her suggestions about her defense whether for paternalistic or other reasons.

Additionally, this decision falls into the admittedly large category of potential slippery slopes. If a constitutional right can be removed from someone based on a standard-less competency determination, then no constitutional rights are truly safe. If the use of the term “competency” is sufficient to say, “no constitutional right for you!” as easily as the fictional Soup Nazi prohibited consumers from buying soup, our justice system is in deep, deep trouble.

Health Law Perspectives (August 2008), available at:
<http://www.law.uh.edu/healthlaw/perspectives/homepage.asp>