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Criminal Law--Insane Persons--Competency to Stand Trial

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CRIMINAL LAW—INSANE PERSONS—COMPETENCY TO STAND TRIAL. —Three recent federal cases will be considered in this comment.

1. Appellant was indicted for felonies in violation of federal statutes and was found mentally incompetent to stand trial. After commitment to an institution he was released by writ of habeas corpus in which proceeding he was adjudicated sane. He was taken into custody, and at trial the United States attorney moved for a determination of appellant's competency to stand trial; following a hearing under 18 U.S.C. § 4244 (1949), the court ruled appellant mentally competent. He was convicted and sentenced and no appeal was taken. Appellant filed present motion under 28 U.S.C. § 2255 (1952), to vacate the sentences, and the district court overruled the motion without a hearing but with a written opinion. This appeal followed. *Held,* that the issue of competency was a factual issue raised and adjudicated in the trial court and subject to review on appeal. Not being an "exceptional" case in which there had been a fundamental miscarriage of justice, it cannot now be collaterally attacked. Motion denied. *Hill v. United States,* 223 F.2d 699 (6th Cir. 1955).

2. The appellant had been convicted of murder in the first degree and sentenced to death in 1938. Prior to trial a psychiatrist had examined appellant at the instance of the United States attorney and found him to be of low intelligence but not of a sufficient degree to affect his "responsibility". Appellant was adjudged insane and committed to a hospital in 1940. In May 1952 the President commuted the sentence to life imprisonment; in November 1952 appellant was certified to have recovered his reason and returned to prison. He then made this motion to vacate the judgment of conviction on the ground, among others, that he was not mentally competent to stand trial in 1938. At the hearing the district court, after considering the *evidentiary material in the record,* made a finding of appellant's competency to have stood trial and denied the motion to vacate. *Held,* that the issue was competency and the district court's conclusion was a direct finding from the evidence as disclosed by the file and the record. There was substantial evidence from which the district court could find, as it did, that appellant was competent at the time of the trial. Motion denied. *Bishop v. United States,* 223 F.2d 582 (D.C. Cir. 1955).

3. This was a hearing to determine the mental competency of *D* who was serving sentence after conviction of felonies. Such hearing is made mandatory by 18 U.S.C. § 4245 (1949) upon cer-

tification by the director of bureau of prisons that there is probable cause to believe that an accused, found to be insane during service of sentence, was mentally incompetent when he was tried. Psychiatrists, serving on the board of examiners at a federal prison where *D* was first imprisoned and at federal medical center to which he was later committed, made the report upon which the director based his certification; they testified that the report meant, in their opinion, that *D* was probably psychotic at the time of the trial. A psychiatrist who had made a pre-trial examination and the arresting officers testified that *D* was of sound mind prior to his trials in 1953. The records of *D*'s trials were consulted and studied by the court and testimony of the psychiatrists concerning matters therein was received. *Held,* that *D* was mentally competent at the time of trial. The testimony of the psychiatrists who examined *D* subsequent to conviction amounted to an opinion that he probably was psychotic at the time of trial and other expert testimony indicates, (a) that the testimony at *D*'s trials contains nothing suggesting a psychosis at that time, and (b) that no one can positively say when *D*'s present mental illness developed into a psychosis. Even assuming that the beginning of *D*'s illness could be traced back to events prior to trial, it had not reached a stage at the time of trial to render him mentally incompetent. *United States v. Fooks,* 132 F. Supp. 533 (D.C. Dist. 1955).

The rule prohibiting trial of an insane person charged with a crime has long been a part of the common law, and more recently of constitutional and statutory law. *Ashley v. Pescor,* 147 F.2d 318 (8th Cir. 1945). The purpose of the rule is to avoid the violation of due process, and to prevent the unfairness inherent in the criminal conviction of one who is actually incapable of making a rational defense. The determination of competency to stand trial depends upon one's capability of making a rational defense and involves the elements of comprehension of position, appreciation of the charges made, and ability to render one's attorneys such assistance as a proper defense demands. See Annot., 3 A.L.R. 94 (1919). It has been held that if a person measures up to these standards, he is competent to stand trial even though on some other subjects his mind may be deranged or unsound. *In re Buchanan,* 129 Cal. 330, 61 Pac. 1120 (1900); see *People v. Perry,* 14 Cal. 2d 387, 94 P.2d 559, 565 (1939).

The common law and many statutes provide a mechanism for determination of competency to stand trial in the form of a hearing, held for such purpose after the court in its discretion deter-

mines the necessity for such inquiry, at which a jury is impaneled to hear evidence on the issue of competency. W. VA. CODE c. 62, art. 3, § 9 (Michie 1955). To the effect that our statute is declaratory generally of the common law, see *State v. Harrison,* 36 W. Va. 729, 738, 15 S.E. 982 (1892). See Annot. 142 A.L.R. 961 (1943). The broad discretion allowed the trial court under the common law and most of these statutes is not present under the federal procedure. There it is provided that upon motion for determination of competency to stand trial made by the United States attorney, by the accused or by the court itself, the court *shall* cause an examination by one psychiatrist and if there is an indication of insanity, *shall* upon notice hold a hearing. 18 U.S.C. § 4244 (1949). Such was the procedure followed in *Hill v. United States, supra,* at which the finding of competency was made based on current evidence presented. In spite of diligence at this point in the proceedings it must be recognized that there is still a real possibility that a mental incompetent may be tried and convicted. Therefore, 18 U.S.C. § 4245 (1949) provides for a mandatory hearing to determine whether an accused was competent to have stood trial when such accused is found insane after having been sentenced where "there is cause to believe that such person was mentally incompetent at the time of his trial", provided that the issue was not raised and determined before or during the trial. *Id.* § 4245.

In *Bishop v. United States, supra,* the only hearing held was one on motion to vacate—fifteen years after the trial. Here the court had to make a finding of competency based on the record. It is required that such determination be supported by findings of fact to be stated by the trial court. 28 U.S.C. § 2255 (1952). As the dissent in *Bishop v. United States* pointed out, inferences of fact were drawn from the evidence and files without the aid of psychiatric adivce. *Id.* at 592. The court inferred from (1) Bishop's own testimony at the time of the trial, (2) Doctor Evans' pre-trial examination (which was merely tentative, its finality depending on a report on results of a psychometric examination), and (3) Bishop's recovery of his sanity after the commutation of the death sentence, that there was no basis for an inference of incompetency at the time of the trial. *Id.* at 585, 586. These inferences were doubtful, if not erroneous, when considered in the light of the material in the record and the findings made in a subsequent psychiatric examination, *viz.,* (1) Doctor Evans had made a pre-trial examination of the accused and it is not clear, when using the word "responsibility", whether he was referring to accused's

mental condition at the time of the offense or at the time of trial, (2) The reports of Doctors Klein and Overholser, based on examination subsequent to the trial, both agreed that accused was feeble minded and mentally deficient. *Id.* at 590, 591. The dissent advocated that another hearing be held at which the trial court would be required to make specific findings of fact from additional evidence to be there presented.

In meeting the same problem of subsequent determination of competency a New York court based the grant of a new trial on clinical examinations made after the accused had been convicted, and disregarded evidence in the record of accused's rational conduct at the trial. *People v. Wolfe,* 102 N.Y.S.2d 12 (Kings Co. 1951). The grant of a new trial was later reversed, 278 App. Div. 967, 105 N.Y.S.2d 594 (2d Dep't 1951), *aff'd* 303 N.Y. 752, 103 N.E.2d 540 (1952). Thus a divergence of opinion is evident as to what constitutes the better basis for the determination of competency when the issue is not raised at the trial but subsequent thereto, *i.e.,* dependence upon, (1) a review of the record, or (2) clinical examination. The New York court has been criticized for substituting "medical concepts for legal concepts". Comment, 12 U. PITT. L. REV. 629 (1951). In *Bishop v. United States,* legal concepts, *i.e.,* a purely legalistic review of the record, unaided by psychiatric advice, caused a denial of accused's motion. The question here would seem to be whether a really rational determination of accused's competency was possible under the circumstances surrounding the trial court's action. Even though the appellate court had no "definite and firm conviction that a mistake had been committed" by the lower court in its handling of the situation, might not a mistake be inherent in the very nature of the procedure used to determine the issue? It is felt that a much fairer and more rational determination of the issue of competency could be made at a hearing held for that purpose at which current evidence is heard, rather than by reference to often unclear and incomplete matters in the record—here, of a fifteen year old case. By "current" is meant evidence, probative of the issue of competency, substantiated by past and present psychiatric inquiry, and considering later clues to the accused's prior competency *as well as* record material of events occurring prior to and at the trial. In setting forth the purpose of 18 U.S.C. § 4245, *supra,* the committee stated, "Based upon past experience, the percentage of convicts in the first classification, [note: those certified by the director of the bureau of prisons, during service of sentence, to be of unsound mind] is

large enough to justify the belief that mental disturbance of a psychotic nature existed at the time of the trial and before." (1949) U.S. CODE CONG. SERV. 1929. Although mere psychosis is not enough to make one incompetent—under the "rational defense" test noted above—to stand trial, this statement does indicate a realization of the problem of subsequent determination of competency.

Ideally then, the insanity of an accused, as affecting his competency to stand trial, should be tested at the time of such trial, *e.g.*, under 18 U.S.C. § 4244, as in *Hill v. United States.* ALI CODE CRIM. PROC. § 307 (1931). Since, due to various reasons, this is not always accomplished, a rational method of determination at a time subsequent to the trial is required. The purely legalistic review of the record in *Bishop v. United States,* as it is pointed out above, leaves much to be desired.

In *United States v. Fooks, supra,* the court, aided by psychiatric advice in the form of expert testimony, based its findings upon a combined consideration of the records of *D*'s trials *and* upon psychiatric examinations subsequent thereto. *Id.* at 535, 536. Both current evidence and record material were fully utilized. If current and probative reports are also relied upon then, proper results can be reached even under the requirement of *Bishop v. United States* that the record be utilized in the determination. The procedure followed by the court in *United States v. Fooks* would seem to be more fruitful in reaching the basic issue of competency to stand trial than a subsequent view only of stale and often incomplete records of trial. If it is a desirable policy not to subject persons who are incapable of understanding their positions to trial and punishment, then it is as necessary to have an accurate and fair method of subsequently determining their competency as it is to have a like procedure prior to or concurrent with the trial.

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EMINENT DOMAIN—FEDERAL CONDEMNATION JUDGMENTS—DOCKETING AND INDEXING WITH STATE RECORDS.—Federal government obtained timber land in a condemnation proceeding. The judgment was correctly docketed and indexed with the clerk of the federal district court. It also was docketed in the office of the county clerk but was indexed and cross indexed without the name of one of the parties. Under the state law this was necessary in order to give a subsequent purchaser constructive notice of judgment