IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMES RODGERS — APPELLANT

VS.

NO. 2007-CA-0348

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF MISSISSIPPI

JAMES ROGERS, A/K/A JAMES WALTER RODGERS — **APPELLANT**

VERSUS — **NO. 2007-CA-0348-COA**

STATE OF MISSISSIPPI — **APPELLEE**

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Procedural History

James Rogers, a/k/a James Walter Rodgers [hereinafter "Rodgers"], was convicted in the Circuit Court of Lee County for the murder of Walter Stolz and was sentenced to a term of life imprisonment. On direct appeal, the Mississippi Supreme Court affirmed his conviction and sentence. *Rogers v. State*, 796 So.2d 1022 (Miss.2001).

On May 14, 2004, Rodgers filed in the circuit court a Motion to Vacate and Set Aside Conviction and Sentence. (C.P.4) Thereafter, the Mississippi Supreme Court ordered the circuit court to conduct a hearing to determine whether Rodgers was competent to be tried at the time of his trial. (T.2-3) Having conducted this hearing, the circuit court found that the defendant "had the capacity to understand the proceedings and also was able to adequately assist his counsel." Accordingly, the court concluded that the defendant was competent to stand trial. The motion for post-conviction relief was dismissed. (C.P.221-

22) Aggrieved by the judgment rendered against him, Rodgers has perfected an appeal to this Court.

Substantive Facts

At the outset, the court made preliminary remarks set out in pertinent part below:

> Mr. Rodgers was indicted by the grand jury of Lee County by indictment returned the 29th day of January, 1999, charging him with murder in the death of Walter Stolz. ...
>
> At some point ... the defendant was ordered to be examined by a psychiatrist or other qualified expert to determine his competency to stand trial and to assist in the defense, preparation of the defense in this charge or to this charge.
>
> As I recall, and not necessarily based on anything in the file, the matter proceeded to trial, and the psychiatric evaluation was never performed, as I understand, though it had been ordered and arrangements had been made for that to be accomplished at the VA Hospital in Memphis, Tennessee.
>
> The jury found the defendant guilty of murder. He was sentenced to serve life imprisonment and has been in custody from that time until today. And is still in custody.
>
> The defendant, pro se as I understand, filed with the Supreme Court a, I'll call it a motion because I'm not exactly certain what it is. **The Supreme Court by its order required this court to conduct a hearing to determine whether or not he was competent at the time of the trial to assist and understand the proceedings.** ...
>
> (emphasis added) (T.2-3)

The court then invited counsel for plaintiff Rodgers to call his first witness. Counsel stated in pertinent part, "I want the record to be clear that we do not waive in any form or fashion our motion that if it should be determined first whether or not the hearing itself has any efficacy or accuracy after so many years and so much lack of medical evidence."

When the court asked whether counsel had any evidence to present in support of that position, counsel asserted that he had "filed a letter ... in the form of an affidavit from a psychologist." (T.3-4) The court then stated the following:

> Counsel, based on that and just common sense alone, I think one would conclude that the passage of time might make it somewhat difficult, possibly impossible to make any real determination of the circumstances existing at the date of the alleged incident. **However, these matters were not brought before the court, and this defendant stands convicted of a murder.**
>
> Now, the attack on the system, as I perceive it to be, involves many, many questions, but I'm going to ask you to go forward with any proof you have ...
>
> (emphasis added) (T.4-5)

Counsel for Rodgers then told the court that he had been unable to procure some of his client's "outstanding medical records" which in his opinion "might" have been relevant. (T.5) With respect to this point, the assistant district attorney set out the state's position as follows:

> Your Honor, the district attorney's position is a properly drawn up subpoena duces tecum properly served on the sheriff's office will get him the records or not, depending on their existence. The district attorney's office is not the repository for those records nor do I make it my business to go to various and sundry agencies and seized [sic] their records on behalf of defendants, particularly ones who are– have been tried and convicted of murder.
>
> I'm glad to see the records, that they appear, but once again, I don't view it as my duty to issue a subpoena for those records.
>
> (T.6)

At the point the court informed counsel for Rodgers, "Well, Counsel, you certainly may subpoena those records. I don't know that there would be any resistance

whatsoever." When counsel reiterated that he had been "escorted from the jail" upon attempting to obtain records "from November the 7th or 8th until the 17th of this year..." the assistant district attorney countered, "[M]y only objection to it is one of relevance ... what those have to do with his mental condition in 1998, 1999, if any. This seems to be a pretty far stretch and pretty remote in time with regard to what the issue is." Disputing the prosecutor's argument, counsel for Rodgers nonetheless agreed to "move on," and called his first witness, John Weddle, who represented the defense at trial. (T.6-8)

Initially, counsel for Rodgers conducted a line of questioning in an apparent attempt to establish ineffective assistance of trial counsel. After the state objected on the ground of relevance, the court sustained the objection, reminding counsel for Rodgers that the question of ineffective assistance was "not a question before this court ... The mandate from the Supreme Court says I'm to determine what his psychological circumstance was, is and/or was at the time." (T.8-11)

Counsel for Rodgers went on to ask Mr. Weddle what had led him to request a competency hearing prior to trial. (T.12) Mr. Weddle answered,

> We had access to some of Mr. Rodgers' records from the VA Hospital. We reviewed those. The reason we decided to ask for a psychiatric evaluation was because I got a call from an individual that had known Mr. Rodgers for quite some time. ... They indicated to me that Mr. Rodgers had suffered some kind of illness while he was serving in the Navy.
>
> (T.12-13)

Mr. Weddle testified additionally that as a result of his motion and affidavit, the Circuit Court of Lee County entered an order for Rodgers to be evaluated by a psychiatrist. Thereafter, Mr. Weddle made an appointment for his client to be examined at the VA Hospital in Memphis. (T.14-16)

Counsel for Rodgers then asked whether the court had received a copy of the results of the examination. (T.17) Mr. Weddle responded,

> I don't know whether the court ever got a copy of it or not, sir. The evaluation, as such, was not really performed, I guess you would say. The doctor saw him on that date. And there's some notes here that some of it you can read, some of it you cannot, but he stated that he did not perform a psychological examination. He did put a GAF score at the bottom or the middle of the page there, but that's when my conversation with Mr. Rodgers about the psychiatric evaluation ensued was when I got this paper.
>
> (T.17)

When counsel for Rodgers asked why he had not filed this report with the court, Mr. Weddle explained, "because this was not a psychiatric evaluation pursuant to the court order. The court ordered required that a psychiatric evaluation be performed. This note specifically states that he did not perform a psychiatric evaluation." In other words, Mr. Weddle "had no psychiatric evaluation to supply to the court." Furthermore, according to Mr. Weddle, the defense had declined "to pursue another evaluation after Mr. Walker discharged Mr. Rodgers on this date is because Mr. Rodgers specifically stated to me that he did not wish to pursue that. That's why we went to trial." (T.19-21)

Counsel for Rodgers then inquired, "And so it's your position that Mr. Rodgers, although you swore that he was incompetent and was needing a psychiatric examination, that he was competent enough to waive this particular situation in your mind?" Mr. Weddle clarified his position as follows: "I'm not sure that I signed an affidavit saying that he was incompetent. I believe I signed an affidavit saying that there was an issue as to his state of mind at the time this alleged crime occurred." Moroever, in Mr. Weddle's words, "We made the decision to go forward with the trial based on Mr. Rodgers' request to do so ...

I felt that Mr. Rodgers could aid me adequately in making that decision, and that's why the decision was made." (T.21-22)

Counsel for Rodgers went on to conduct a colloquy set out in relevant part as follows:

> Q. Okay. Now then, what factors did you consider when you arrived as your conclusion to make the second affidavit that he was within his faculties and capacities to assist you and stand trial?
>
> A. His ability to communicate to me, his theory of his defense.
>
> Q. His what?
>
> A. His theory of his defense. His witnesses that he would like to call on his behalf as well as witnesses that could testify about the victim in this case.
>
> Q. Is that it?
>
> A. That's not it. I mean, you get a feel for the way a defendant can communicate with you and assist you, and Mr. Rodgers appeared to be able to do that quite competently throughout my entire representation of him.
>
> Q. Do you think that you should make a decision based on getting a feel? You said you got a feel for that. Where did you get that feel from?
>
> A. Well when you speak with someone, Mr. Long, you find out whether or not they're competent to communicate their ideas to you. In Mr. Rodgers' case his theory of his defense, the witnesses that could testify about this case and my conclusion was that he was able to assist me in his representation of him in this case.
>
> * * * * *
>
> [V]ery rarely do you have a situation where you request a psychiatric evaluation on a client. In this case that decision was made solely on the phone call that I got from a person that knew Mr. Rodgers and related an illness that he suffered while

in the Navy that might affect his ability to use good judgment. And I personally, although I did sign the affidavit, ... it was my experience that Mr. Rodgers was able to assist me.

As far as what capacities I evaluated him in, I can't answer that. As you have pointed out, I'm not a psychiatrist, but I have to make decisions on based on my communication with my client on a daily basis, whether or not they're able to assist me effectively. Mr. Rodgers was able to assist me effectively. In fact, he communicated theories of his case quite well to me and my staff, and he communicated to me the witnesses that I needed to speak with on his behalf and also that could testify about the victim in this case.

(T.26-29)

On cross-examination of Mr. Weddle, the assistant district attorney began with a line of questioning set out in pertinent part below:

Q. ... You represented the defendant in this case. He goes to trial. I want to talk about a couple of legalities. You're familiar with the Supreme Court, the United States Supreme Court, what their standard for competence is?

A. Yes, sir.

Q. Which is essentially can he consult with his attorney with a rational degree of understanding, and can he understand what he's charged with basically.

A. Basically, yes, sir.

* * * * *

Q. [H]e consulted with you and he understood the case, did he not?

A. Yes, sir.

Q. Understood what he was charged with?

A. Yes, sir.

Q. Understood the ins and outs of the case?

A. Yes, sir.

Q. You explained the legalities to him. Based on his responses to you, he understood that.

A. Yes, sir.

Q. Okay. And the entire time he was consulting with you, did you have any reservations whatsoever about going forward with trial without another basically examination by a psychiatrist or psychologist?

A. No, sir, I did not.

Q. Okay. And the reason for that was-- you know what the standard for competency is; and this man met it.

A. Yes, sir.

* * * * *

Q. Okay. He was able to recall relevant facts? He in fact testified in his own behalf, did he not?

A. Yes, sir.

Q. Okay. And although the jury chose not to believe him, he was able to recount all the facts of that day and tell what happened to the jury.

A. Yes, sir.

Q. Or his version of it, correct?

A. Yes, sir.

Q. Okay. And of course prong number four is he was able to testify in his own defense if appropriate, which he absolutely did in this case, correct?

A. Yes, sir. We discussed that at the appropriate time. We never made that decision until the State has rested, until the end of the trial. But that decision was made by Mr. Rodgers based on my counsel with him.

* * * * *

Q. And he understood what was at stake, did he not?

A. He understood. He understood that he had a right not to and chose to do so.

Q. One thing I want to point out. This order for psychiatric examination, you were taken to task somewhat regarding whether or not you had provided that to the Court, filed it, etc. Are you familiar with the order that was entered?

A. Yes, sir.

Q. Did the order not– to your knowledge, the order stated, did it not, that he was to be examined by Dr. William Walker, Jr., and that Dr. Walker was to provide a report to the Court?

A. Yes, sir.

* * * * *

Q. All right. So he goes, he picks out a psychiatrist of his own choosing to do the exam, correct?

A. This was his existing physician, yes, sir.

* * * * *

Q. And that psychiatrist did not do a forensic examination?

A. He did not.

* * * * *

Q. Okay. And as this case progressed you were able to spend more and more time talking to and observing the man himself. Correct?

A. As the case progressed I felt like the psychiatric examination was more of a formality than anything else. We had had ample opportunity to communicate with Mr. Rodgers about his case, and we felt like it was more or less a non issue.

* * * * *

Q. Okay. And the defendant essentially decided to waive having an exam done by another professional, correct?

A. He made it clear to us that he did not want any other person to perform a psychiatric evaluation other than Dr. Walker. And when Dr. Walker did what he did, he decided to proceed to trial without one.

* * * * *

Q. Basically Mr. Weddle, I want to invite some specific case law. You are familiar, are you not, with that the trial court itself has no affirmative duty under the law to conduct a competency hearing?

A. I believe that's correct. ... And unless I suppose the court ... on its own motion requests one, which was not done in this case.

Q. Correct. And I believe His Honor was the trial judge. Did anything happen during that trial that would cause the court sua sponte to order a competency hearing? Did the defendant go crazy? Did he bite any bailiffs? I mean, did anything happen?

A. No, sir.

Q. Okay. The issue we're dealing with today is competency as you understand the defendant's motion.

A. Yes, sir.

* * * * *

Q. Okay. As far as the criteria in Mississippi as you know it to be, and under the United States Supreme Court guidelines, was this defendant competent at the time that you represented him for trial in 1999, I suppose?

A. Yes, sir.

(emphasis added) (T.33-39)

Counsel for Rodgers next called attorney Omar Craig, who testified that "there should have been a psychological evaluation, which was not done." He went on to testify, "Secondly, I question the lawyer ... " (T.43)

On cross-examination, Mr. Craig acknowledged that he did not try Rodgers' murder case; that he was not in the courtroom when it was tried; and that he had not read the transcript of the trial. Ultimately, he admitted that he had no firsthand knowledge of this case "whatsoever." He also acknowledged that Mr. Weddle was in a far better position to ascertain whether Rodgers was competent to stand trial at the time of the trial. (T.45-48) Finally, the assistant district attorney conducted a line of questioning set out in pertinent part below:

> Q. ... If Judge Tommy Gardner had observed something that created a question in his mind as to the defendant's competence, do you think he would have made the wrong decision and just simply allowed it to go forward?
>
> A. Are you saying he should have done it sue [sic] sponte?
>
> Q. Yes, sir.
>
> Q. I think that he needed to be reminded of what had gone on, what the record reflected, and that was a concern that he was not. I don't think that a trial judge has to be familiar with everything within a file. ... But I think that's the duty of the prosecuting attorney and the defense attorney to bring those to the attention of the court.
>
> **Q. But that's not the question that I asked. If Judge Gardner had observed anything–**
>
> **A. Knowing him as I do–**
>
> **Q. –that would have caused him to question this man's competence, do you think he would have just gone forward and ignored it?**

A. Knowing Judge Gardner as I do, sue [sic] sponte he would have done it, yes, sir.

(emphasis added) (T.50-51)

Finally, counsel for Rodgers called Nat Collins, a nurse practitioner who testified that he had seen Rodgers "at the jail" sometime prior to November 17, 2006. Mr. Collins recalled that at this time, Rodgers "was on Paxil, and ... several other medicines." According to Mr. Collins, Paxil normally is prescribed for "a group of things," including "general anxiety disorder, social anxiety disorder, depression, major depression, things like that." (T.53-54)

On cross-examination, the assistant district attorney asked Mr. Collins, "So in 1999 you had absolutely and utterly no basis of knowledge whatsoever in any way, shape or form of whether this guy was competent or not to stand trial in 1999?" Mr. Collins answered, "No, sir, I don't." (T.58)

SUMMARY OF THE ARGUMENT

The findings and conclusions of the circuit court are not clearly erroneous. To the contrary, they are supported by substantial credible evidence. Accordingly, the judgment of the circuit court should be affirmed.

PROPOSITION:

THE FINDINGS OF THE CIRCUIT COURT ARE NOT CLEARLY ERRONEOUS; ACCORDINGLY, ITS JUDGMENT SHOULD BE AFFIRMED

After conducting a hearing on the issue whether Rodgers was competent to stand trial at the time of his trial,[1] the circuit court denied relief with an order set out in pertinent part below:

> This cause comes before the Court on Defendant's Motion to Vacate and Set Aside Sentence following a retroactive competency determination hearing ordered by the Supreme Court of Mississippi.
>
> The Defendant alleges that he was denied a fair and impartial trial due to "the trial court's failure to provide an adequate competency determination before trial."
>
> The Court has reviewed the affidavit of counsel, Mr. John Weddie, as well as the trial transcript. In addition, this Court held an evidentiary hearing on December 12, 2006 to determine whether the defendant was competent to stand trial at the Defendant's previous murder trial.
>
> **The United States Supreme Court has set forth two basic requirements for competency to stand trial: an assurance that the defendant has the capacity to understand the proceedings and also the assurance that the defendant is able to assist his counsel. *Medina v. California*, 505 U.S. 437 (1992). After thorough review, this**

[1]The circuit court conducted this hearing in compliance with the order of the Mississippi Supreme Court. Accordingly, the issue whether the circuit court was required to determine the efficacy of such a hearing is a non sequitur.

> **Court is of the opinion that the Defendant had the capacity to understand the proceedings and also was able to adequately assist his counsel.**
>
> The Court's conclusion is based upon a review of the transcript of the trial, and the Court's evaluation of the Defendant's overall demeanor throughout the entire trial for murder. **Furthermore, the testimony of Mr. John Weddle at the evidentiary hearing re-iterated the Defendant's competency. Mr. Weddle testified that the Defendant was clearly able to understand the proceedings and was clearly able to adequately assist his counsel through the entire proceedings. In addition, Mr. Weddle and Defendant discussed the defense of insanity and the question of competency to stand trial. Defendant instructed Mr. Weddle that those matters would not be pursued, and he would proceed to trial on a theory of self-defense/accident, which is exactly what he attempted to convince the jury of, without success.**
>
> **After a thorough review, this Court is of the opinion that James Walter Rodgers was competent to stand trial.**
>
> (emphasis added) (C.P.221-22)

At the outset, the state points out that Rodgers was granted a hearing for the limited purpose of determining whether he was competent to stand trial at the time of his murder trial. Competency of a defendant to stand trial entails "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." *Caylor v. State*, 437 So.2d 444, 447, n.1 (Miss.1987), citing *Dusky v. United States*, 362 U.S. 402 (1960). Accord, *Dunn v. State*, 693 So.2d 1333, 1340 (Miss.1997). Additionally, the defendant should be "to recall relevant facts" and "to testify in his own defense if appropriate." *Howard v. State*, 701 So.2d 274, 280 (Miss.1997). His "ability to satisfy the foregoing criteria should be

commensurate with the severity and complexity of the case." *Id.* To require a finding of incompetency,

> [t]he evidence must show more than a possibility that defendant is incompetent to stand trial-the evidence must go further until it appears to the trial court that there is a probability that defendant is incapable of making a rational defense. In this initial inquiry, the trial judge must weigh the evidence and be the trier of the facts.
>
> *Evans v. State*, 725 So.2d 613, 661 (Miss.1997), quoting *Emmanuel v. State*, 412 So.2d 1187, 1188-89 (Miss.1982).

The trial court's ruling on this issue will not be reversed unless it is "manifestly against the overwhelming weight of the evidence." *Id.*

As shown by the following language, Rodgers bore the burden of establishing his claim:

> The United States Supreme Court recognizes that the allocation of the burden of proof in competency hearings in criminal trials lies squarely within the discretion of state courts, and specifically that the allocation of the burden of proof to the defendant does not offend due process. *Medina v. California*, 505 U.S. 437, 449-52, 112 S.Ct. 2572, 2579-81, 120 L.Ed.2d 353, 366-68 (1992). Where there is a serious question about the sanity or competency of a defendant to stand trial, "it naturally devolves upon the defendant to go forward with the evidence to show his probable incapacity to make a rational defense." *Emanuel v. State*, 412 So.2d 1187, 1189 (Miss.1982); see also *Evans v. State,* 725 So.2d 613, 660 (Miss.1997). The defendant must show incompetency by a preponderance of the evidence. *Griffin v. State*, 504 So.2d 186, 191 (Miss.1987).
>
> *Ross v. State*, 954 So.2d 968, 1007 (Miss.2007)

Having considered the evidence presented at hearing, the circuit court found that Rodgers had failed to sustain this burden. No error has been shown in the circuit court's

finding and conclusion. As the Supreme Court reiterated recently in *Burns v. State*, 879 So.2d 1000, 1003 (Miss.2004),

> [t]he standard of review after an evidentiary hearing in post-conviction relief cases is well-settled: "We will not set aside such finding unless it is clearly erroneous. Put otherwise, we will not vacate such a finding unless, although there is evidence to support it, we are on the entire evidence left with the definite and firm conviction that a mistake has been made." *Meeks v. State*, 781 So.2d 109, 111 (Miss.2001).

Not only did Rodgers fail to shoulder his burden of establishing that he was incompetent to stand trial at the time of his murder trial, but as shown by the Statement of Facts set about above, the overwhelming evidence presented at the hearing showed otherwise. The appellee adopts by reference the following well-supported argument made by the assistant district attorney at the conclusion of the hearing:

> [W]hat has been brought out here today is just that. It's all speculation, except for the testimony of John Weddle. who was this defendant's attorney at the time of trial. The test once again, ... is essentially is the defendant has a sufficient present ability to consult with his lawyer in a reasonable degree of understanding and in a rational as well as factual understanding of the proceedings against him.
>
> * * * * *
>
> This defendant by the test enunciated by the United States Supreme Court was absolutely competent to stand trial. This defendant, if the more, however we want to put it, refined stringent test, whatever you want to call it, of the Mississippi Supreme Court as set forth in McGee and other cases. It that's applied, is he able to percieve and understand the nature of the proceedings? Well yes, he was. Is he able to rationally communicate with his attorney about the case? Yes, he was. Is he able to recall relevant facts? Yes, he was, and did so on the stand when he testified. Was he able to testify in his own defense? Absolutely he did. And was his ability to satisfy those criteria commiserate [commensurate?] with the severity and complexity of the case? The person who was, most besides the defendant himself, in a position to answer those

> questions and who doesn't have quite the self-serving motive that the defendant has was John Weddle. And his answer to those questions is abundantly clear to the Court, and this is that this man was competent to stand trial.
>
> This man requested a psychiatric evaluation by and through his attorney John Weddle. They went to the psychiatrist that he wanted to see, and that psychiatrist did not perform a full forensic, apparently would not do so, and this man did not want to see another psychiatrist. In effect, in consultations with his attorney, he abandoned the idea. ...
>
> The Court, Your Honor, there's likewise nothing in the record to indicate anything that the Court directly observed about this defendant that would have required the Court sue [sic] sponte to proceed with the competency hearing.
>
> In short, Your Honor, the law on this point is abundantly clear. This man by the criteria set forth by the United States Supreme Court and the Mississippi Supreme Court was absolutely competent to stand trial when he stood trial. ...
>
> (T.66-70)

Far from being clearly erroneous, the circuit court's ruling is overwhelmingly supported by the evidence presented at the hearing. No basis exists for disturbing the judgment entered below.

CONCLUSION

The state respectfully submits the arguments presented by Rodgers are without merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL
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BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Deirdre McCrory, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 15th day of November, 2007.

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