

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONALD HOOD

APPELLANT

VS.

NO. 2017-CP-00165

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: LAURA H. TEDDER
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 9530**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Issue	iii
Statement of the Case and Pertinent Facts.	1
Summary of the Argument.	4
Argument.	5
Conclusion	21
Certificate of Service.	22

TABLE OF AUTHORITIES

Federal Cases

<i>Dusky v. United States</i> , 362 U.S. 402 (1960).....	1
<i>Mackey v. United States</i> , 401 U.S. 667, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1971)	9
<i>Medina v. California</i> , 505 U.S. 437, 112 S.Ct. 2572, 120 L.Ed. 2d 353 (1992)	4
<i>Sawyer</i> , 497 U.S., 110 S.Ct. 2822.....	9, 10
<i>Teague v. Lane</i> , 489 U.S. 288 (1989)	9, 10, 11

State Cases

<i>Brown v. State</i> , 198 So.3d 325 (Miss.Ct.App. 2015).....	6, 7
<i>Caylor v. State</i> , 437 So.2d 444 (Miss. 1983)	1, 2
<i>Conner v. State</i> , 632 So.2d 1239 (Miss.1993)	8
<i>Evans v. State</i> , 226 So.3d 1, 2017 WL 2592415, (Miss. June 15, 2017).....	4
<i>Evans v. State</i> , 725 So.2d 613 (Miss. 1997)	4
<i>Gammage v. State</i> , 510 So.2d, 802 (Miss. 1987).....	1
<i>Hearn v. State</i> , 3 So. 3d 722 (¶14) (Miss. 2008)	16, 17, 19
<i>Hood v. State</i> , 17 So.3d 548 (Miss. 2009)	1, 2
<i>Howard v. State</i> , 701 So.2d 274 (Miss.1997)	7
<i>Jay v. State</i> , 25 So. 3d 257 (Miss. 2010).....	16, 18, 19
<i>Jones v. State</i> , 902 So. 2d 593 (Miss. Ct. App. 2004)	8
<i>Manning v. State</i> , 929 So.2d 855, (Miss. 2006).....	6, 8, 9
<i>Martin v. State</i> , 871 So.2d 693 (Miss. 2004)	16, 17
<i>Pitchford v. State</i> , 240 So.3d 1061 (Miss. 2017)	4, 14
<i>Rowland v. State</i> , 42 So.3d 503 (Miss.2010).....	11
<i>Sanders v. State</i> , 9 So.3d 1132 (Miss. 2009)	passim

State Statutes

Miss.Code Ann. § 99–39–5(2) (Supp.2014).....	11
Miss.Code Ann. § 99–39–5(2)(a)(i).....	11
Miss.Code Ann. § 99–39–23(6) (Supp.2014).....	11
Miss.Code Ann. §§ 99-39-3, 99-39-21(1), and 99-39-21(2) (Supp.1993).....	10
Miss. Code Ann. § 99-13-11	1, 7
Miss. Code Ann. §§ 97-5-31 and 97-5-33(5).....	1, 2

State Rules

Mississippi Uniform Circuit and County Court Rule 9.06	7
--	---

STATEMENT OF THE ISSUES

ISSUE: The trial court did not violate Hood's due process rights by failing to conduct a mental competency hearing, since the record included the findings of Dr. Chriss W. Lott that Hood was competent to stand trial and was not in need of further psychiatric services.

STATEMENT OF THE CASE AND PERTINENT FACTS

On July 10, 2006, Ronald Hood was indicted by a Yazoo County Grand Jury of the crime of exploitation of children under Mississippi Code §§ 97-5-31 and 97-5-33(5) (Rev. 2006).

Hood v. State, 17 So.3d 548 (Miss. 2009). On or about April 16, 2007, Hood's trial counsel filed a Motion for Mental Examination pursuant to Mississippi Code Annotated § 99-13-11 (Rev. 2000), which provides:

In any criminal action in the circuit court in which the mental condition of a person indicted for a felony is in question, the court or judge in vacation on motion duly made by the defendant, the district attorney or on the motion of the court or judge may order such person to submit to a mental examination by a competent psychiatrist or psychologist selected by the court to determine his ability to make a defense; provided however, any cost or expense in connection with such mental examination shall be paid by the county in which such criminal action is pending.

Hood's motion further stated:

In *Gammage v. State*, 510 So.2d, 802, 803 (Miss. 1987), the supreme court held that a "defendant not competent to stand trial is one who does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, or does not have a rational as well as factual understanding of the proceedings against him." (citing *Dusky v. United States*, 362 U.S. 402 (1960); *Caylor v. State*, 437 So.2d 444, 447 n.1 (Miss. 1983)).

The trial court granted Hood's Motion for Mental Examination, finding that "the Defendant shall undergo a mental examination to determine the fitness to stand trial in this matter." The trial court ordered that the examination would be performed by Dr. Christopher Lott at the expense of Yazoo County and that Hood and his counsel would be responsible for scheduling the examination. Dr. Christopher Lott conducted the mental examination of Hood on October 4, 2007. Dr. Lott's report was filed with the trial court on October 18, 2007. Dr. Lott provided the following forensic opinion regarding Hood's competency to stand trial:

It is my opinion, to a reasonable degree of psychological certainty, that Mr. Hood has the sufficient present ability to confer with his attorney with a reasonable degree of rational understanding, and he has a factual and rational understanding of the nature and object of the charges against him. Mr. Hood's intellectual level appeared to be in the low average range, and his reading level falls in the low borderline range, so any complex legal material should be explained to him in simple and concrete terms.

Mr. Hood does not appear to need further testing or psychiatric treatment at this time and he has been returned to the custody of the Holmes County Sheriff's Department.

Hood was tried two months later, on December 11, 2007. He was convicted of the crime of exploitation of children under Mississippi Code §§ 97-5-31 and 97-5-33(5) (Rev. 2006) on December 12, 2007. The trial court sentenced Hood as an habitual offender to twenty (20) years in the custody of the Mississippi Department of Corrections without the possibility of parole.

Id. Hood then filed a direct appeal. The Mississippi Supreme Court affirmed Hood's conviction and sentence on July 30, 2009. *Hood v. State*, 17 So.3d 548 (Miss. 2009). Hood's Motion for Rehearing was denied on August 20, 2009. Hood filed his first Motion for Post-Conviction in the Mississippi Supreme Court with his Application for Leave to Proceed in the Trial Court on June 17, 2010. The Mississippi Supreme Court denied Hood's motion on July 21, 2010 and denied his motion to reconsider on August 25, 2010.

Hood's current Motion for Post-Conviction Relief and Application for Leave to Proceed in the Trial Court was filed on October 27, 2015. On January 7, 2016, the Mississippi Supreme Court directed the State of Mississippi to respond to Hood's contention that the trial court violated his due process rights by failing to conduct a mental competency hearing. The State filed its Response on March 9, 2016. The Supreme Court thereafter granted Hood permission to proceed in the trial court on his claim that his due process rights had been violated by the trial

court's failure to hold a competency hearing prior to trial.

On May 9, 2016, Hood filed a four-page document entitled, "Second Post Conviction Relief," to which he attached his "Motion for Appointment of Counsel" and a copy of a his "Application to Proceed in the Trial Court."

On October 30, 2018, the trial court filed its Order, finding that:

. . . the [trial] court had reasonable grounds to believe Hood was competent to stand trial and no due process rights were violated. On October 18, 2007, Hood's mental evaluation was filed with the clerk. Hood was evaluated by Dr. Chriss Lott, and was found to be competent to stand trial. The Court received no information which, objectively considered, should reasonably have raised a doubt about the defendant's competence and alerted it to the possibility that the defendant could neither understand the proceedings, nor rationally aid his attorney in his defense. During the trial, Hood did not display any demeanor evincing incompetence nor did defense counsel offer any statements to the court that the defendant was unable to rationally consult with counsel or assist in his own defense.

Accordingly, the trial court correctly denied Hood's Petition for Post-Conviction Collateral Relief. Hood appealed the trial court's denial of relief and subsequently filed an Amended Appeal. The State now addresses its argument to Hood's Amended Appeal.

SUMMARY OF THE ARGUMENT

The law presumes a criminal defendant competent to stand trial. *Evans v. State*, 226 So.3d 1, 13–14, 2017 WL 2592415, (Miss. June 15, 2017). And the defendant bears the burden to prove “by substantial evidence that [he or she] is mentally incompetent to stand trial.” *Evans v. State*, 725 So.2d 613, 660 (Miss. 1997) (quoting *Medina v. California*, 505 U.S. 437, 448, 112 S.Ct. 2572, 120 L.Ed. 2d 353 (1992)).

Sanders strict application of the provisions of URCCC 9.06 is not retroactive and does not apply to Ronald Hood’s 2007 conviction. Even if *Sanders* applies retroactively to this case, the trial court complied with the purpose and spirit of *Sanders* and correctly denied Hood’s Motion for Post-Conviction Collateral Relief.

Further, the Court in *Pitchford v. State*, 240 So.3d 1061 (Miss. 2017), has held that a trial court’s competency evaluation order does not in and of itself conclusively (or necessarily) establish, for purposes of URCCC 9.06’s mandates, or for appellate review purposes, that the trial court had reasonable grounds to believe the defendant was incompetent to stand trial. The determination must be made based on the facts and circumstances attending each particular case. *Pitchford* at 1069 ¶42.

The trial judge did not err in not conducting a competency hearing on the record prior to trial. Further, the trial judge’s Order denying Hood’s Motion for Post-Conviction Collateral Relief, wherein she applied the correct standard to the evidence presented, constituted a valid retrospective competency hearing as permitted by the holding in *Pitchford*. The Court in *Pitchford* held unequivocally that “failure to hold a competency hearing can be cured retroactively.” *Pitchford* at 1070. The Court in *Pitchford* held that where sufficient

information is available to conduct a meaningful hearing to evaluate retrospectively the defendant's competence to stand trial, such a process does not violate due process standards." When she entered her Order denying post-conviction relief, the trial judge had before her Hood's psychiatric evaluation conducted by Dr. Chriss Lott, the medical records Hood attached to his Petition, her own recollection of Hood's demeanor and conduct at trial, as well as the transcript of the trial. The review of this evidence was sufficient to allow the trial judge to conduct a sufficient retroactive hearing on the basis of the written record. Accordingly, Hood was not denied his due process rights by the lack of a hearing prior to trial.

ARGUMENT

ISSUE: **The trial court did not violate Hood’s due process rights by failing to conduct a mental competency hearing, since the record included the findings of Dr. Chriss W. Lott that Hood was competent to stand trial and was not in need of further psychiatric services.**

A. *Sanders* is not retroactive and does not apply to Ronald Hood’s 2007 conviction.

Hood relies on *Sanders v. State*, 9 So.3d 1132 (Miss. 2009). *Sanders* moved for a competency examination prior to trial. *Id.* at 1136. After the examination, no competency hearing was held. The *Sanders* Court announced that URCCCPR 9.06 required an on-the-record hearing after a competency examination. However, because Hood was tried in 2007, *Sanders* does not apply because it represents a change in procedure which is not retroactive. *Manning v. State*, 929 So.2d 855, 899, (Miss. 2006). Therefore, the requirement in *Sanders* should not be applied.

In *Brown v. State*, 198 So.3d 325 (Miss.Ct.App. 2015), Brown had pleaded guilty in 1999 and was pursuing post-conviction relief. He argued that his conviction must be vacated due to the lack of a formal competency hearing, relying on the 2009 Mississippi Supreme Court ruling in *Sanders*, 9 So.3d at 1136 (¶ 16). In that opinion, the Mississippi Supreme Court strictly interpreted Uniform Circuit and County Court Rule 9.06 to mandate a competency hearing in every case where the trial court has ordered a psychological exam. *Sanders*, 9 So.3d at 1136 (¶ 16). Brown reasoned that, since he underwent a court-ordered mental exam, the trial court had to conduct a formal competency hearing before accepting his guilty plea, and that the court's failure to do so entitled him to a new trial. But *Sanders* and the later cases that have relied on *Sanders* do not apply to Brown's 1999 guilty plea because they are not retroactive. See *Brown v. State*,

198 So. 3d 325, 331 (Miss. Ct. App. 2015). As in *Brown*, the trial court followed the procedure required at the time Hood entered his plea. There is a presumption that the lower courts rule and act correctly. Therefore, it is presumed that the circuit court would have conducted a separate hearing before the plea hearing, if it had been required at the time Brown entered his plea.

Jones argues that the trial court erred when it failed to conduct a mental competency hearing pursuant to Mississippi Uniform Circuit and County Court Rule 9.06 after ordering him to undergo a competency examination at the Mississippi State Hospital. He explains that the court, instead of conducting the hearing, entered an order sua sponte that he was competent to stand trial. According to Jones, the court's error prevented him from presenting evidence to rebut the evaluation filed by the Mississippi State Hospital. The State argues that the circuit court had sufficient information to determine that Jones was competent upon receiving the mental evaluation from the hospital.

In *Jones v. State*, 902 So.2d (Miss.Ct.App. 2004), the Court relied on the language of Rule 9.06, which states in part:

If before or during trial the court, of its own motion or upon motion of an attorney, has reasonable ground to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with § 99-13-11 of the Mississippi Code Annotated of 1972.

After the examination the court shall conduct a hearing to determine if the defendant is competent to stand trial. After hearing all the evidence, the court shall weigh the evidence and make a determination of whether the defendant is competent to stand trial.

The *Jones* Court held that the provisions of URCCCP 9.06 make clear the trial court's obligation to order a competency hearing under certain circumstances. *Jones* (citing *Howard v.*

State, 701 So.2d 274, 280-81 (Miss.1997)). The real question, then, is whether ‘reasonable grounds’ existed to believe that [the accused] was incompetent or insane. *Jones* (citing *Conner v. State*, 632 So.2d 1239 (Miss.1993)). Only if such reasonable grounds exist, does URCCCP 9.06 mandate a competency hearing. *Id.* The determination of what is ‘reasonable,’ of course, rests largely within the discretion of the trial judge. *Id.* He sees the evidence first hand; he observes the demeanor and behavior of the defendant.” *Id.*

The *Jones* Court noted that for purposes of reviewing a decision to forego a competency hearing, the Court applied the test enunciated by the Fifth Circuit Court of Appeals: “Did the trial judge receive information which, objectively considered, should reasonably have raised a doubt about defendant’s competence and alerted him to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense?” *Jones v. State*, 902 So. 2d 593, 597 (Miss. Ct. App. 2004). This was the standard in place at the time of Hood’s trial in December of 2007.

The strict application of URCCCR 9.06 announced in *Sanders* does not apply retroactively to Hood. Hood was convicted on December 11, 2007, almost two years before the Mississippi Supreme Court announced the rule in *Sanders* on May 28, 2009. Hood is not on direct appeal; he is before this Court in a post-conviction relief action. Since his direct appeal was not pending when the Supreme Court made its holding in *Sanders*, *Sanders* would only apply to Hood’s case if the holding applied retroactively. The holding in *Sanders* does not apply retroactively because it is a rule that applies to procedure. “New rules of procedure, on the other hand, generally do not apply retroactively.” *Manning v. State*, 929 So.2d 855, 899, (Miss. 2006).

The Mississippi Supreme Court announced in *Manning v. State*, 929 So.2d 855, 900 (Miss. 2006), that it would continue to apply the very limited retroactive standard set forth by the United States Supreme Court in *Teague v. Lane*, 489 U.S. 288, 311 (1989). The Court observed in *Manning*, “The principle announced in *Teague* serves to ensure that gradual developments in the law over which reasonable jurists may disagree are not later used to upset the finality of state convictions valid when entered. This is but a recognition that the purpose of federal habeas corpus is to ensure that state convictions comply with the federal law in existence at the time the conviction became final, and not to provide a mechanism for the continuing reexamination of final judgments based upon later emerging legal doctrine.” *Sawyer*, 497 U.S. at 234, 110 S.Ct. 2822.

In *Teague v. Lane*, 489 U.S. 288, 311, 109 S.Ct. 1060, 103 L.Ed.2d 334, 356 (1989), the United States Supreme Court held, by a plurality vote that “a new rule of constitutional law will not be applied retroactively to a case on habeas review unless it falls within one of two limited exceptions.” “The first exception suggested by Justice Harlan—that a new rule should be applied retroactively if it places ‘certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe,’ ” (Citing *Mackey v. United States*, 401 U.S. 667, 692, 91 S.Ct. 1160, 1180, 28 L.Ed.2d 404 (1971)). The second exception is “reserved for watershed rules of criminal procedure.” *Teague*, 489 U.S. at 311, 109 S.Ct. 1060. In approving this plurality decision, the United States Supreme Court later held that:

The principle announced in *Teague* serves to ensure that gradual developments in the law over which reasonable jurists may disagree are not later used to upset the finality of state convictions valid when entered. This is but a recognition that the purpose of federal habeas corpus is to ensure that state convictions comply with the federal law in existence at the time the conviction became final, and not to provide a mechanism for the continuing reexamination of final judgments based

upon later emerging legal doctrine.

Sawyer, 497 U.S. at 234, 110 S.Ct. 2822. Finding this rationale was consistent with the Mississippi Uniform Post-Conviction Collateral Relief (“PCR”) Act, the Mississippi Supreme Court opined that:

Accordingly, in determining whether a prisoner may avail himself of an intervening decision, this Court applies our PCR act to determine whether an issue raised on PCR is one warranting relief from waiver based on cause and actual prejudice, as contemplated by § 99-39-21(1), or one not procedurally barred, although litigated at trial and on direct appeal, because of the existence of cause and actual prejudice, as contemplated by § 99-39-21(2). Application of this test is based on state law grounds. See Miss.Code Ann. §§ 99-39-3, 99-39-21(1), and 99-39-21(2) (Supp.1993).

As to the cause element of the PCR Act, we found that Powers did create a new rule of law and that prior to the new rule, there was no indication that Batson would be changed; therefore, the showing of cause had been met by the intervening decision. [citation omitted] We relied heavily on *Teague* in determining if there was a showing of actual prejudice. We determined that pursuant to *Teague* the defendant would have to show actual prejudice within one of the two exceptions enumerated by the Supreme Court.

The first *Teague* exception is not met in this case because the rule is merely procedural, requiring a certain order of operation and method of recording of a finding. Accord *Teague*, 489 U.S. at 311, 109 S.Ct. at 1075-76, 103 L.Ed.2d at 356. Stated differently, the new rule does not place a category of primary conduct beyond the reach of the criminal law nor does it prohibit punishment for a class of defendants. *Teague*, 489 U.S. at 311, 109 S.Ct. at 1075-76, 103 L.Ed.2d at 356. The second *Teague* exception does not assist Hood because it is limited to those new procedures without which the likelihood of an accurate conviction is seriously diminished. Restated, “absence of a fair cross section on the jury venire does not undermine the fundamental fairness that must underlie a conviction or seriously diminish the likelihood of obtaining an

accurate conviction.” under the second exception.” *Teague*, 489 U.S. at 315, 109 S.Ct. at 1078, 103 L.Ed.2d at 359. Therefore, because there was no actual prejudice suffered by Hood, he was not entitled to relief pursuant to the Act. Further, the *Sanders* decision should not be applied retroactively to Hood’s final conviction as the *Sanders* rule is not a prerequisite to fundamental fairness of the type that may come within the exception.” *Id.* It is merely a rule of procedural process. Accordingly, the State submits that *Sanders v. State*, 9So.3d 1132 (Miss. 2009) does not apply. Under the former, less strict, interpretation of URCCC 9.06, the trial court did not err by not conducting a competency hearing on the record prior to trial.

B. Even if *Sanders* applies retroactively to this case, the trial court complied with the purpose and spirit of *Sanders* and the trial court’s denial of Hood’s Motion for Post-Conviction Collateral Relief should be affirmed.

Hood asserts that he should have been provided an on-the-record competency hearing pursuant to Rule 9.06 and that his Second Amendment Due Process rights were violated by the trial court’s failure to conduct a competency hearing. Hood’s present PCR motion is well beyond the three-year time-bar and is successive. See Miss.Code Ann. § 99–39–5(2) (Supp.2014); Miss.Code Ann. § 99–39–23(6) (Supp.2014). However, Hood asserts that these bars do not apply due to the “fundamental rights” exception of *Rowland v. State*, 42 So.3d 503, 507 (Miss.2010), and because he has newly discovered evidence, Miss.Code Ann. § 99–39–5(2)(a)(i); Miss.Code Ann. § 99–39–23(6). Hood cites *Sanders v. State*, 9 So.3d 1132 (Miss. 2009), in support of his argument that his conviction must be reversed because the trial court did not conduct an on-the-record competency exam, despite having ordered Hood to undergo a competency exam.

Although the trial court did not conduct an on-the-record competency hearing after

ordering a mental evaluation, the purpose of URCCCP Rule 9.06 was satisfied where a mental evaluation report with a finding that the defendant was competent to stand trial was made a part of the record considered by the trial court in the trial and sentencing of the defendant. The record shows that Hood's attorney requested a mental competency exam to determine whether Hood was competent to stand trial. The trial judge granted the motion for the reasons stated in the motion by defense counsel. Hood was evaluated for mental competency by a psychiatrist, who, applying the correct legal standard, made a forensic finding that Hood was competent to stand trial. The mental competency evaluation was made a part of the record that the trial judge relied on in the trial and sentencing of Hood. The evaluation was made just two months prior to trial, so that the assessment provided a current status of Hood's competency at the time of trial.

In this case, defense counsel requested a mental competency evaluation to determine Hood's competency to stand trial. The examination was conducted two months prior to trial, on October 4, 2007, by psychologist, W. Chriss Lott, Ph.D. Lott conducted a thorough evaluation and made specific findings in his report regarding Hood's ability to stand trial. Lott noted in his Mental Status Evaluation of Mr. Hood:

[Hood] was alert, attentive and responded promptly to questions. He was precisely oriented. His speech was appropriate and his responses were at all times coherent and goal directed. There were no significant expressive and receptive language deficits noted.

Dr. Lott determined that Hood had a Full Scale IQ Score of 89, which is within the average range. His recent remote and immediate memory appeared intact. His reading level was at the low borderline range and at the 4.7 grade level. His verbal abstracting abilities were in the low average range. Dr. Lott assessed Hood as having a GAF (Global Assessment of

Functioning) score of 71, indicating that Hood had a slight impairment in work or school with occasional symptoms that are expected reactions to psychological stressors. See DSM V. Hood, despite his protests was a fairly high functioning individual in the month prior to trial.

Dr. Lott found that Hood understood that he was charged with exploitation of children and that he was being charged as a habitual offender. He understood that the jury would find him “guilty or not guilty” and that the judge would determine his sentence. Hood knew that if one or more jurors could not agree the result would be “deadlock, mistrial, it’s dismissed.” Hood understood that witnesses testified and that a character witness is a person that knows you, an eye witness is a person who actually saw the event and that an expert witness is someone like Dr. Lott. Hood stated that his attorney should challenge the witnesses and that if he began shouting at a witness, the trial judge would kick him out. Hood knew that he could not be compelled or prevented from testifying at his trial. He said that he met with his attorney five to seven times and denied having any disputes with him.

Based on his examination and findings, Dr. Lott offered the following conclusions:

FORENSIC OPINIONS:

It is my opinion, to a reasonable degree of psychological certainty, that Mr. Hood has the sufficient present ability to confer with his attorney with a reasonable degree of rational understanding, and he has a factual and rational understanding of the nature and object of the charges against him. Mr. Hood’s intellectual level appeared to be in the low average range, so any complex legal material should be explained to him in simple and concrete terms.

DISPOSITION:

Mr. Hood does not appear to need any further testing or psychiatric treatment at this time and he has been returned to the custody of the Holmes County Sheriff’s Department.

Based on these findings, and on her own observations of Hood’s conduct during court

proceedings, in her Order denying post-conviction collateral relief, the trial judge found that:

. . . the [trial] court had reasonable grounds to believe Hood was competent to stand trial and no due process rights were violated. On October 18, 2007, Hood's mental evaluation was filed with the clerk. Hood was evaluated by Dr. Chriss Lott, and was found to be competent to stand trial. The Court received no information which, objectively considered, should reasonably have raised a doubt about the defendant's competence and alerted it to the possibility that the defendant could neither understand the proceedings, nor rationally aid his attorney in his defense. During the trial, Hood did not display any demeanor evincing incompetence nor did defense counsel offer any statements to the court that the defendant was unable to rationally consult with counsel or assist in his own defense.

In *Pitchford v. State*, 240 So.3d 1061 (Miss. 2017), the Mississippi Supreme Court held that in the absence of reasonable doubt of a defendant's competence, the obligation to *sua sponte* order a competency hearing simply does not arise. The trial judge plainly finds in her Order that no such doubt arose as to Hood's competence. The trial judge's review of Dr. Lott's report and her assessment of Hood's behavior at trial constitute a valid retrospective hearing and finding of competence. As evidence in support of his Petition, Hood presented only hearsay medical records and recollections. The hearsay records did not raise a doubt as to his competency to stand trial because they uniformly represent him as depressed about his situation, but with a complete understanding of where he was and what was occurring. While the hearsay records indicate mental issues, they do not indicate incompetence to assist his attorney in his representation at trial. Further, Hood did not offer any affidavits of individuals who could attest to his competence or lack thereof at the time of trial. Nor did he identify any witnesses he might call at a hearing to support his claim of incompetence. Finally, Hood spoke at length on the record during his sentencing hearing. He clearly understood the proceedings and spoke with clarity and purpose. While the trial judge at that time ordered that he should be assessed and

receive assistance with any mental problems that he might have, there was no indication that he was not competent to stand trial or that the trial judge had any reasonable doubt as to his competence to stand trial.

While Rule 9.06 of the Uniform Rules of County and Circuit Court Practice provides that if the trial court orders a mental evaluation it must subsequently conduct a competency hearing, Mississippi case law provides that in certain situations, the purpose of the Rule 9.06 can be satisfied without strict compliance. Hood relies on *Sanders v. State*, 9 So. 3d 1132 (Miss. 2009), to support his position that reversal is required because a competency hearing was not held after a mental evaluation was ordered. *Sanders*, however, is distinguishable from the present case. In *Sanders*, the Mississippi Supreme Court reversed a murder conviction because after the trial court ordered a mental evaluation, no competency hearing was held, the trial court made no on-the-record determination that Sanders was competent to stand trial, nor was there any evidence in the record to support a finding that Sanders was competent to stand trial. *Id.* at 1137, 1139.

Hood's case is distinguishable from *Sanders* because, although there was no strict compliance with Rule 9.06, the purpose of the rule was satisfied by the trial court's reliance on the mental evaluation which is part of the record on appeal. The *Sanders* court made clear that strict compliance with Rule 9.06 is not necessary when the purpose of Rule 9.06 is satisfied. *Id.* at 1137. The *Sanders* opinion also strongly suggests that where the trial court's finding that the defendant is competent to stand trial is based on the results of a mental evaluation which is made part of the record, the purpose of Rule 9.06 is met.

The Mississippi Supreme Court again suggested in *Jay v. State*, 25 So. 3d 257 (Miss.

2010), that where a report of the defendant's mental evaluation which states that a defendant is competent to stand trial is relied on by the trial court and made part of the record, the purpose of Rule 9.06 is met.

Both *Sanders* and *Jay* explicitly acknowledge that where a mental evaluation is ordered, but no subsequent competency hearing is held prior to trial, reversal is not required where "the purposes of Rule 9.06 were satisfied." *Sanders* at 1137; *Jay* at 263. Both *Sanders* and *Jay* suggest that a trial court's determination that a defendant is competent to stand trial which is based on the mental evaluation report which is made part of the record satisfies the purpose of Rule 9.06. Hood was determined to be competent under the *Dusky* standards by a competent psychiatrist. The judge, defense counsel, prosecutor and Hood knew that at the time of trial. Any possible doubt of Hood's competency was resolved when a licensed psychiatrist found him to be competent after a thorough examination.

A trial court's determination that a defendant is competent to stand trial will not be disturbed on appeal unless the finding is "manifestly against the overwhelming weight of the evidence." *Hearn v. State*, 3 So. 3d 722, 728 (¶14) (Miss. 2008) (quoting *Martin v. State*, 871 So.2d 693, 698 (Miss. 2004)). A defendant is competent to stand trial if he can understand the nature of the proceedings, communicate with his attorney about the case, recall relevant facts, testify in his own defense if he so chooses, and "satisfy the foregoing criteria [] commensurate with the severity of the case." *Id.* at (¶15). While Rule 9.06 of the Uniform Rules of County and Circuit Court Practice provides that if the trial court orders a mental evaluation it must subsequently conduct a competency hearing, Mississippi case law provides that in certain situations, the purpose of the Rule 9.06 can be satisfied without strict compliance.

Coleman relies on *Sanders v. State*, 9 So. 3d 1132 (Miss. 2009), to support his position that reversal is required because a competency hearing was not held after a mental evaluation was ordered. *Sanders*, however, is distinguishable from the present case. In *Sanders*, the Mississippi Supreme Court reversed a murder conviction because after the trial court ordered a mental evaluation, no competency hearing was held, the trial court made no on-the-record determination that Sanders was competent to stand trial, nor was there any evidence in the record to support a finding that Sanders was competent to stand trial. *Id.* at 1137, 1139 (§§17,25). First, the present case is distinguishable from *Sanders* because the trial court in the present case made a determination, based on the results of the mental evaluation, that Coleman was competent to stand trial. The present case is also distinguishable from *Sanders* because in the present case although there was no strict compliance with Rule 9.06, the purpose of the rule was satisfied by the trial court's reliance on the mental evaluation which is part of the record on appeal. The *Sanders* court made clear that strict compliance with Rule 9.06 is not necessary when the purpose of Rule 9.06 is satisfied. *Id.* at 1137 (§§19-20). For example, where a mental evaluation is ordered and no competency hearing is held, the purpose of Rule 9.06 is satisfied if at trial a qualified witness is examined regarding the defendant's competence to stand trial. *Id.* (citing *Hearn* at 730 (§19)). The *Sanders* opinion also strongly suggests that where the trial court's finding that the defendant is competent to stand trial is based on the results of a mental evaluation which is made part of the record, the purpose of Rule 9.06 is met. The following language from *Sanders* supports this position:

The record lacks any testimony that relates to Sanders' competence to stand trial. The docket indicates that Dr. Webb did file a report with the trial court. However, the report was not entered into evidence and was not part of the record on appeal. Therefore, this Court is unable to review the report and Dr. Webb's opinion, if any, as to Sanders's competency to stand trial. One may argue or

speculate that the appellate record before us today was sufficient to assume that Sanders was competent to stand trial. However, we reiterate the fact that the appellate record before us contains no evidence that Sanders was found to be competent to stand trial. At a minimum, there was no definitive testimony or report that determined Sanders competent to stand trial.

Id. at 1139 (¶25).

The Mississippi Supreme Court again suggested in *Jay v. State*, 25 So. 3d 257 (Miss. 2010), that where a report of the defendant's mental evaluation which states that a defendant is competent to stand trial is relied on by the trial court and made part of the record, the purpose of Rule 9.06 is met. In *Jay*, the defendant sustained a traumatic brain injury while awaiting trial. *Id.* at 258 (¶5). One week before trial, defense counsel filed a motion for continuance, claiming that Jay was not competent to stand trial due to the injury. *Id.* at (¶6). Attached to the motion was a letter from a doctor, the Director of the Brain Injury Program at Methodist Rehabilitation Center, who opined that Jay was “‘unable to participate in any court proceedings at this time’ due to his injuries.” *Id.* The trial court then ordered a court appointed psychiatrist to conduct a psychiatric evaluation of Jay to determine whether he was competent to stand trial. *Id.* at (¶7). No competency hearing was held, and the psychiatrist's report was not filed with the court until two days after the trial commenced. *Id.* at (¶8). As it turns out, the result of the report was that the examining psychiatrist found that Jay was competent to stand trial. *Id.* at 259 (¶8). Because there was neither strict compliance with Rule 9.06 nor had the purpose of the rule been met, Jay's conviction was reversed and the case was remanded for a new trial subject to a determination of whether Jay was competent to stand trial. *Id.* at 263, 264 (¶¶34-35, 40). However, the *Jay* court stated the following which suggests that the purpose of Rule 9.06 would have been met had there been evidence in the record that the trial court found Jay competent to stand trial based on a

review of the psychiatrist's report.

There is no indication in the record that the trial judge ever read or considered [the report]. Dr. Webb's report concluded that Jay was 'competent to stand trial.' Thus, the court file contained conflicting opinions as to whether Jay was competent to stand trial. We have no way of knowing whether the trial judge considered the two opinions and found Dr. Webb's opinion more persuasive, or simply failed to hold a hearing to consider the matter.

Id. at 262 (¶27).

Both *Sanders* and *Jay* explicitly acknowledge that where a mental evaluation is ordered, but no subsequent competency hearing is held prior to trial, reversal is not required where "the purposes of Rule 9.06 were satisfied." *Sanders* at 1137 (¶20); *Jay* at 263 (¶34). So far, the only example we have of what satisfies the purpose of Rule 9.06 other than a competency hearing is where the psychiatrist who conducted the mental evaluation testifies at trial regarding the defendant's competence to stand trial. *Id.* (both citing *Hearn v. State*, 3 So. 3d 722 (Miss. 2008)). However, both *Sanders* and *Jay* suggest that a trial court's determination that a defendant is competent to stand trial which is based on the mental evaluation report which is made part of the record satisfies the purpose of Rule 9.06. Because the trial court's determination that Hood was competent to stand trial was based on the extensive mental evaluation report which is in the record, the State submits that the purpose and spirit of Rule 9.06 has been satisfied and Hood's conviction should stand.

The trial judge did not err in not conducting a competency hearing on the record prior to trial. Further, the trial judge's Order denying Hood's Motion for Post-Conviction Collateral Relief, wherein she applied the correct standard to the evidence presented, constituted a valid retrospective competency hearing as permitted by the holding in *Pitchford*. The Court in *Pitchford* held unequivocally that "failure to hold a competency hearing can be cured

retroactively.” *Pitchford* at 1070. The Court in *Pitchford* held that where sufficient information is available to conduct a meaningful hearing to evaluate retrospectively the defendant’s competence to stand trial, such a process does not violate due process standards.” When she entered her Order denying post-conviction relief, the trial judge had before her Hood’s psychiatric evaluation conducted by Dr. Chriss Lott, the medical records Hood attached to his Petition, her own recollection of Hood’s demeanor and conduct at trial, as well as the transcript of the trial. The review of this evidence was sufficient to allow the trial judge to conduct a sufficient retroactive hearing on the basis of the written record.

Accordingly, Hood was not denied his due process rights by the lack of a hearing prior to trial.

CONCLUSION

The assignments of error presented by the Appellant are without merit and the trial court's denial of post-conviction collateral relief should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

BY: s/ Laura H. Tedder
Special Assistant Attorney General
MSB # 9530

OFFICE OF THE ATTORNEY GENERAL

Post Office Box 220

Jackson, Mississippi 39205-0220

Telephone: (601) 359-3680

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system and mailed via United States Postal Service the document to the following non-MEC participants:

Honorable Jannie M. Lewis
Circuit Court Judge
P.O. Box 149
Lexington, MS 39095

Honorable Akillie Oliver
District Attorney
P.O. Box 311
Durant, MS 39063

Ronald Hood, # 50024
SMCI
P.O. Box 1419
Leaksville, MS 39451

This the 11th day of July, 2019.

By: s/ Laura H. Tedder
Laura H. Tedder
Special Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL

Post Office Box 220
Jackson, Mississippi 39205-0220
Telephone: (601) 359-3680