

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

November 26, 2024

[Cite as *11/26/2024 Case Announcements #4, 2024-Ohio-5574.*]

APPEALS NOT ACCEPTED FOR REVIEW.

2024-0976. State v. Cullen.

Madison App. No. CA2022-08-016, **2024-Ohio-1916**.

Donnelly, J., dissents, with an opinion joined by Brunner, J.

Stewart, J., dissents and would accept the appeal on proposition of law No. I.

DONNELLY, J., joined by BRUNNER, J., dissenting.

{¶ 1} This case presents a significant issue that this court should address. Because the court declines to accept jurisdiction in this case, we do not have a record from the trial court or the appellate court. Accordingly, I rely on the majority and dissenting opinions of the Twelfth District Court of Appeals as the basis for the facts in the discussion that follows.

{¶ 2} Appellant, Jonathan Cullen, was convicted of rape and sentenced to life in prison without parole. 2024-Ohio-1916, ¶ 1, 21 (12th Dist.). The question Cullen raises in his first proposition of law is whether the trial court abused its discretion in making the determination that he was competent to stand trial. Competence is presumed in Ohio. *State v. Were*, 2008-Ohio-2762, ¶ 45, citing R.C. 2945.37(G) and *State v. Jordan*, 2004-Ohio-783, ¶ 28. Here, “Cullen’s counsel had a good faith basis to believe Cullen suffered a mental illness or mental disease that affected him,” 2024-Ohio-1916 at ¶ 64 (12th Dist.) (Piper, J., dissenting), though all relevant medical records had been purged, *id.* at ¶ 6 (majority opinion). Cullen moved for an independent expert evaluation, *see* R.C. 2945.371, which the State did not oppose, 2024-Ohio-1916 at ¶ 64 (12th Dist.) (Piper, J., dissenting). The trial court conducted a competency hearing, *id.* at ¶ 7 (majority opinion), and it found that “[t]here is evidence suggesting a mental disability.

The extent of that is unclear.” *Id.* at ¶ 19. Nevertheless, the court neither granted nor denied the request for an independent expert evaluation before determining that Cullen was competent to stand trial. *Id.* at ¶ 7-20.

{¶ 3} Trial courts have considerable discretion in this context, but that discretion is not *carte blanche*. We should examine whether the court properly exercised its discretion in determining Cullen’s competency to stand trial in this case. Refusing to allow a competency evaluation that the State did not oppose strikes me as an extraordinary act. Whether this was an abuse of discretion is impossible to say given the absence of a record before us. But it is a question that this court should address in order to provide guidance to the bench and bar for the next time they have a case that involves a potentially incompetent defendant.

{¶ 4} In his memorandum in support of jurisdiction, Cullen rightly asserts that “[t]he right to not be tried while incompetent is rooted in the principles of due process and fundamental fairness.” *See Drope v. Missouri*, 420 U.S. 162, 171-172 (1975); *State v. Thomas*, 2002-Ohio-6624, ¶ 36. Because I would accept Cullen’s jurisdictional appeal so that we could address this important constitutional issue, I dissent.
