

Fitzgerald v. Honorable Myers

Citation: Fitzgerald v. Meyers, 402 P.3d 442 (Ariz. 2017).

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Author: Vice Chief Justice Pelander

Joined by: Chief Justice Bales and Justices Brutinel, Timmer, Bolick, and Gould.

Concurrence: Judge Vasquez.*

Facts: In April 2005, John Vincent Fitzgerald went from Hawaii to Arizona where his mother, Margaret Larkin, lived in Sun City.¹ He brought several weapons, ammunition, and tactical gear.² He had his mother's fiancé, J.T., pick him up from the airport to keep the visit a surprise from his mother.³ After he arrived in Arizona, he attacked his mother with a samurai sword and shot her in the head twice, yelling that she was a pedophile.⁴ The State charged Fitzgerald with burglary and first degree murder and sought a death sentence.⁵

In his pretrial competency hearing, Fitzgerald was found incompetent and received treatment. In March 2008, the court found his competency had been restored.⁶ At trial, the jury rejected Fitzgerald's guilty-except-insane defense and found him guilty of both burglary and first degree murder.⁷ At the penalty phase, Fitzgerald had an emotional outburst during victim impact statements.⁸ Consequently, the court ordered another Rule 11 competency evaluation and declared a mistrial.⁹ Fitzgerald was again found incompetent and received restoration treatment.¹⁰ Both parties later agreed that he was competent, and a new penalty phase jury decided that Fitzgerald should be sentenced to death.¹¹ The Arizona Supreme Court affirmed his convictions and sentences.¹²

In late 2013, Randall Craig was appointed to represent Fitzgerald for Rule 32 Post Conviction Relief ("PCR") proceedings.¹³ Craig stated he had always noticed delusional behavior from Fitzgerald, but that they could meaningfully communicate about trial preparation.¹⁴ He started to notice a slow decline in Fitzgerald's ability to communicate about the case.¹⁵ Prison records showed that Fitzgerald stopped taking his medicine in December 2015, because he

* Justice Lopez IV recused himself.

¹ Fitzgerald v. Meyers, 402 P.3d 442, 445 (Ariz. 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² State v. Fitzgerald, 303 P.3d 519 (2013).

¹³ *Fitzgerald*, 402 P.3d at 445.

¹⁴ *Id.*

¹⁵ *Id.*

thought he was being poisoned.¹⁶ He had auditory and visual hallucinations and refused treatment or evaluation.¹⁷ In March 2016, Fitzgerald was finally evaluated by Dr. Agharkar, who stated that Fitzgerald could not rationally assist in preparing the PCR petition.¹⁸

Procedural history: Fitzgerald moved the superior court to conduct a hearing to determine his competency and stay all PCR proceedings until he was found competent.¹⁹ Fitzgerald argued that A.R.S. § 13-4041(B) and Arizona Rule of Criminal Procedure Rule 32.5 give a defendant the right to competency hearings in post-conviction proceedings.²⁰ The superior court denied the motion, stating that “at this stage of the current proceedings [Fitzgerald’s] competence is not necessary to assist PCR counsel or the Court.”²¹ Additionally, the court stated that Fitzgerald “does not have a right to a competency determination at this point in a post-conviction proceeding.”²² The court of appeals declined jurisdiction²³, and Fitzgerald petitioned the Arizona Supreme Court for special action relief.²⁴ The Arizona Supreme Court granted review because a convicted capital defendant’s entitlement to a competency determination in PCR proceedings is a recurring issue of statewide importance and has resulted in inconsistent rulings in the superior court.²⁵

Issue:

1. A.R.S. § 13-4041(B) mandates the appointment of counsel for post-conviction proceedings for capital defendants.²⁶ While the attorney was working on the defendant’s PCR, the attorney stated that he noticed a significant decline in the ability of the defendant to have meaningful conversations regarding his case and assist in preparation of the case. Thus, the issue is whether the denial of his motion for a competency hearing violates his rights under § 13-4041(B) to “effectively and completely communicate with his appointed counsel” in Rule 32 Proceedings.²⁷
2. Rule 32.5 sets forth the required contents of a PCR petition and states that “[t]he petition should be accompanied by a declaration by the defendant stating under penalty of perjury that the information contained is true to the best of the defendant’s knowledge and belief.”²⁸ The defendant was having paranoid delusions, refused to meet with specialists, refused to take his medication, and refused evaluation. Therefore, the issue is whether a denial of a competency hearing violates the defendant’s rights under 32.5 to “effectively and competently determine if the

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 446.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 449.

information in the [PCR petition] is true and accurate” because an incompetent defendant may not be able to determine if the information he provides in his PCR petition is correct.²⁹

Holding: Neither § 13-4041(B) nor Rule 32.5 provides a right to, or requires, a competency determination in capital case PCR proceedings.

Disposition: The trial court’s denial of the defense motion for a competency determination and stay the PCR proceedings is affirmed.

Rule: A competency determination is not required in post-conviction relief proceedings.

Reasoning:

- **A.R.S. § 13-4041(B):** The court stated the terms of the statute did not support Fitzgerald’s argument that he was entitled to a competency determination in PCR proceedings.³⁰ The statute does not mention or require competence. And the court stated that the legislature has expressly provided for competency in other statutes.³¹ In cases where the court interpreted those statutes , the court confirmed the defendant’s right to a competency determination before trial or sentencing.³² The court posited that if the legislature had intended to stretch the right of competency to apply in PCR proceedings, it would have done so, and the court will not extend it.³³ The court also pointed out that the PCR statutory scheme has specified other times when competency is required.³⁴ Because the legislature expressly required a capital defendant’s competence before he can waive PCR counsel, and has imposed no competency requirement elsewhere in PCR proceedings, the court disagreed with Judge Vasquez’s position that “there is a statutory right [to competency in PCR proceedings] that is implicit given the statutory scheme.³⁵

The court also rejected Fitzgerald’s argument that the American Bar Association (“ABA”) guidelines provide for such a right because a lawyer could not otherwise comply with ABA guidelines if he or she could not communicate effectively with an incompetent client.³⁶ The court stated that the requirement in procedural rules of capital cases that PCR counsel “be familiar with and guided by” the ABA guidelines did not create substantive or statutory right to competency.³⁷

²⁹ *Id.* at 446.

³⁰ *Id.* at 447.

³¹ See ARIZ. REV. STAT. ANN. § 13-4502(A) (2017); *id.* § 8-291.01(A).

³² *Fitzgerald*, 402 P.3d at 447.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 448.

The court also relied on *Ryan v. Gonzales*³⁸ in rejecting Fitzgerald’s argument. In that case, the United States Supreme Court refused to read a competency requirement into federal habeas petitions. The court stated that it “[has never said that the right to competence derives from the right to counsel,” and held that the statute giving habeas petitioners the right to counsel “does not provide [them] with a ‘statutory right’ to competence.”³⁹ The court reasoned that the “backward-looking, record-based nature of most habeas proceedings” allows the counsel to provide effective assistance, regardless of competency.⁴⁰ The court found this reasoning analogous to the present case, and although not all Rule 32 proceedings are “record based,” is the court found no statutory right to competence.⁴¹

- **Rule 32.5:** Rule 32.5 does not mention or require a defendant’s competence as a prerequisite in capital case PCR proceedings either.⁴² Rule 11 expressly prohibits an incompetent defendant from being tried, sentenced, concealed, or punished.⁴³ If the court wanted to impose the same prohibitions on capital case PCR proceedings, they would have done so expressly, rather than impliedly.⁴⁴ The rule does not require the defendant to be competent in order for his PCR to proceed, nor does it require a stay in the proceedings until competence is established.⁴⁵

The court recognized that there are certain circumstances where a defendant’s input and participation regarding Rule 32 claims are needed and imperative.⁴⁶ The court has the authority to order a stay of the proceedings until competency is resolved.⁴⁷ The court only held that neither A.R.S. § 13-4041(B) nor rule 32.5 established a right to a competency hearing during PCR.⁴⁸

Concurrence (Judge Vasquez): Judge Vasquez agreed that the trial court did not err in denying Fitzgerald’s motion for a competency evaluation.⁴⁹ However, Judge Vasquez disagreed that petitioners are not entitled to competency in Rule 32 proceedings for certain claims.⁵⁰ He argued the majority’s holding undermined the court’s admission that a trial court may order a competency hearing if it will be helpful or necessary to the claim.⁵¹ He would have acknowledged Fitzgerald’s limited right to competency, stated the basis for that

³⁸ 568 U.S. 57 (2013).

³⁹ *Id.* at 66.

⁴⁰ *Id.* at 68.

⁴¹ The court also found support for its ruling in *State v. White*, 815 P.2d 869 (1991) (holding that incompetence during the appellate process does not violate due process because convicted defendants generally don’t participate in the appeal and incompetence does not affect the accuracy of the decision).

⁴² *Fitzgerald*, 402 P.3d at 449.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 450.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 452.

⁵⁰ *Id.*

⁵¹ *Id.*

right to provide trial courts with a standard for gauging its exercise of discretion, and held that there is an implicit right to competency in PCR.⁵²

⁵² *Id.* at 453.