

SYNOPSIS OF OPINION IN DEATH PENALTY CASE IN THE MISSISSIPPI SUPREME COURT HANDED DOWN October 19, 2017

Terry Pitchford v. State of Mississippi, No. 2015-CA-01818-SCT (October 19, 2017)

CASE: Capital Murder/Death Penalty Appeal From Denial Of Post Conviction Relief

TRIAL COURT: Circuit Court, Grenada County

ATTORNEYS for Terry Pitchford: Office of Capital Post-Conviction Counsel (Jamila Alexander Virgil, Louwlynn Vanzetta Williams)

ATTORNEYS for State of Mississippi: Office of the Attorney General (Cameron Leigh Benton, Jason L. Davis)

DISPOSITION: *En banc*. Denial by circuit court of post-conviction relief to Pitchford from his conviction of capital murder and death sentence affirmed. Beam, J. for the Court. Waller, C.J., Randolph, P.J., Coleman, Maxwell, Chamberlin and Ishee, JJ., concur. Kitchens, P.J., concurs in result only with separate written opinion joined by King, J.

ISSUES: Whether a retrospective competency hearing was sufficient to protect Pitchford's due process and Rule 9.06 based rights not to have been tried while incompetent; whether the trial court erred in retrospectively finding Pitchford competent at the time of his 2006 trial.

FACTS: In February 2006, Terry Pitchford was convicted of capital murder and sentenced to death despite the fact that no competency hearing had been held after a psychiatrist opined that Pitchford was likely incompetent. The conviction and sentence were affirmed on direct appeal. *Pitchford v. State*, 45 So. 3d 216 (Miss. 2010). Pitchford timely filed a PCR motion in the Supreme Court claiming, *inter alia*, that this violated UCCCR 9.06, the then-applicable rule on such hearings, and the Supreme Court remanded for a retrospective competency hearing. After an evidentiary hearing, the trial court found Pitchford retrospectively competent. Pitchford appealed, contending that a retrospective competency hearings were not allowed by Rule 9.06 and intervening MSSC precedent interpreting it, and that the presumption of competency relied upon by the trial court had been rebutted when a competency examination was first ordered.

HELD: Retrospective competency hearings do not violate Rule 9.06 and are consistent with constitutional requirements. There is a presumption of competency that must be overcome by "substantial evidence" of incompetence and an order for competency evaluation does not in and of itself necessarily do that. The evidence supported the trial court's determination in this case. To the extent that *Coleman v. State*, 127 So. 3d 161 (Miss. 2013), *Smith v. State*, 149 So. 3d 1027 (Miss. 2014), *Hollie v. State*, 174 So. 3d 824, 830 (Miss. 2015) are inconsistent with the holdings in the instant matter, they are overruled.

The concurring opinion agrees that the trial court did not err in concluding that Pitchford was competent in February 2006, and thus concurs in the result. It disagrees with the majority's holding that Rule 9.06 permits retrospective competency hearings and with overruling existing precedent, but would hold those questions were procedurally barred on this appeal. The Supreme Court's original remand order correctly and finally disposed of those issues by distinguishing existing precedent rather than overruling it.

To read the full opinion, click here: <https://courts.ms.gov/Images/Opinions/CO125009.pdf>

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