

RENDERED: APRIL 14, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-000473-MR

ANTHONY WINKLE

APPELLANT

v. APPEAL FROM BRACKEN CIRCUIT COURT  
HONORABLE JOHN W. MCNEILL III, JUDGE  
ACTION NO. 03-CR-00001-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI AND SCHRODER, JUDGES; MILLER, SENIOR JUDGE.<sup>1</sup>

GUIDUGLI, JUDGE: Anthony Winkle has appealed from the judgment of the Bracken Circuit Court entered pursuant to a conditional guilty plea. Winkle's plea was conditioned on his right to appeal from the circuit court's ruling that he was competent to stand trial. We affirm.

On January 24, 2003, the Bracken County grand jury indicted Winkle on two counts of Criminal Abuse, First Degree, a

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<sup>1</sup> Senior Judge John D. Miller, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Class C Felony,<sup>2</sup> for abusing four-year-old A.W. and less than one-year-old M.W. between the months of February and November 2002. A.W. and M.W. are the natural daughters of Deanna Wooten, who was also indicted as a co-defendant by the same grand jury on two counts of Criminal Abuse, First Degree, for permitting Winkle, her live-in boyfriend, to abuse her daughters.<sup>3</sup>

Specifically, the indictment charged Winkle with striking and kicking A.W. on November 23, and with breaking M.W.'s leg on October 8 and striking her about the head on November 24. In a separate action, Winkle was charged in 2003 with Rape, First Degree, in relation to A.W., and was later indicted in 2005 by the Bracken County grand jury on a lesser charge of Sexual Abuse, First Degree.<sup>4</sup>

In July 2003, Winkle and the Commonwealth agreed, and the circuit court ordered, that Winkle was to undergo an in-house mental evaluation at Kentucky Correctional Psychiatric Center (hereinafter "KCPC") in LaGrange, Kentucky pursuant to KRS 504.100 and KRS 504.020. KCPC was to report on Winkle's

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<sup>2</sup> KRS 508.100.

<sup>3</sup> Indictment No. 03-CR-00001-002. The Bracken Circuit Court eventually determined that Wooten was incompetent to stand trial based upon her limited ability to process new information, meaning that she did not have the ability to assist her counsel at trial in her own defense. The Commonwealth appealed that ruling (appeal No. 2004-CA-002334-MR), which was affirmed in a not-to-be published opinion of this Court rendered January 13, 2006. The matter is currently pending on a motion for discretionary review before the Supreme Court of Kentucky.

<sup>4</sup> Indictment No. 05-CR-00004. That charge is currently pending in the circuit court, where Winkle is again raising the issue of his competency.

competency to stand trial as well as on criminal responsibility. This evaluation had previously been ordered in the Bracken District Court in relation to the then-pending rape charge, for which he had been arrested on May 10, 2003. Winkle was also evaluated by his own expert, licensed psychologist Dr. Ed Connor. The circuit court eventually held a competency hearing on October 26, 2004.

The Commonwealth's evidence reflects that Winkle was admitted to KCPC for his first evaluation on August 20, 2003, and was released on September 11. With licensed clinical psychologist, Steven J. Simon, PhD, acting as the lead evaluator, Winkle underwent a battery of psychological tests, and was determined to have a Full Scale IQ of 59. He was also diagnosed as having an adjustment disorder with anxious mood. During his stay at KCPC, Winkle was prescribed 50 mgs of Zoloft for his complaints of anxiety and worry. Regarding his competency to stand trial, Dr. Simon determined that Winkle met the minimal standards for competency as he was able to understand and appreciate the nature and consequences of the legal proceedings and to assist in his own defense, despite his substandard range of intellectual ability and minimal literacy skills. However, Dr. Simon recommended that Winkle would need additional patience and support in the courtroom, such as an explanation of complex terms. Winkle was admitted to KCPC for a

second evaluation on April 26, 2004. His Full Scale IQ had improved to 66, although he was still diagnosed with an anxiety disorder and found to be functioning at a significantly substandard range of intellectual ability. Dr. Simon concluded that Winkle still met the minimal criteria for competency to stand trial. As before, Dr. Simon recommended that he would need more patience, support, and assistance so that he could understand the proceedings. At the competency hearing, Dr. Simon testified in conformity with his reports.

Winkle's expert Dr. Connor evaluated him on November 14, 2003. In his report, Dr. Connor initially stated that because of his knowledge deficits, Winkle did not meet the standard of competency to stand trial, but that he could be restored in about three months with treatment, including antidepressant medications and education regarding the court. Dr. Connor noted that Winkle appeared to be suffering from the early stages of major depression with mild psychotic features, which further compromised his competency to stand trial. At the hearing almost a year later, Dr. Connor testified that after briefly talking with him prior to the hearing, he considered Winkle to be at least marginally competent. Winkle was less anxious and depressed, and was more able to comprehend his questions. In a trial situation, he would be able to understand most concepts if everything was done slowly and explained to

him. Dr. Connor also recommended that someone, other than his attorney, check with him periodically to insure his continued understanding.

By order entered November 3, 2004, the circuit court declared that Winkle was competent to stand trial:

This matter comes before the court on the defendant's motion for hearing on the question of his competence to stand trial. Having heard the testimony of two doctors, both holding Ph.D degrees in clinical psychology, the Court finds as follows:

(1) Dr. Ed Connor, a psychologist in private practice and witness for the defendant, testified that he saw the defendant in November 2003, after he was seen by Dr. Steven J. Simon of Kentucky Correctional Psychiatric Center ("KCPC"). Dr. Connor testified that he had given the defendant an abbreviated version of the IQ test and, because it confirmed Dr. Simon's results and further because its results generally tracked the full scale test, he believed the first test administered at KCPC. His verbal score was 63, the performance-based score was 59, and the overall was 59, classifying him as mentally retarded. At the time the defendant was seen by his witness, he was significantly depressed which significantly contributed to Dr. Connor's opinion that he was incompetent to stand trial. While he had a basic understanding of the charges, his knowledge of courtroom procedures, terminology and function of various courtroom personnel was limited. Dr. Connor, however, spent thirty minutes with the defendant prior to the instant hearing, and modified his opinion to the effect that the defendant was "marginally competent" to stand trial. When asked what was meant by this opinion, he said that the depression he had noted in Mr.

Winkle had substantially subsided and that he could stand trial, provided the court appointed an attorney, in addition to his defense attorney, (a) to educate the defendant as to court procedures and the functions of court personnel and the jury and (b) to sit with the defendant during trial and explain carefully what was going on to ensure that the defendant would grasp the meaning and significance of the events and testimony. In this fashion, it was Dr. Connor's opinion that Mr. Winkle could effectively assist his attorney in the case.

(2) Dr. Simon opined many of the same things but noted that he had found Mr. Winkle competent to stand trial. He was seen by Dr. Simon, both in August, 2003 and in June 2004. Dr. Simon testified that, while Dr. Connor had interviewed the defendant in jail, he had seen him in a much more therapeutic and relaxed atmosphere at KCPC. He testified that Mr. Winkle could easily have been suffering from the strains of incarceration and inmate taunting when Dr. Connor saw him. Nevertheless, Dr. Simon also felt that the defendant "needed some level of support," referring to his ability to understand the proceedings.

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(A) Incompetency to stand trial means, as a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one's own defense. KRS 504.060(4).

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Being advised, IT IS HEREBY ORDERED that defendant, Anthony Lee Winkle, is competent to stand trial, provided he is supplied with an attorney, appointed by the court, whose purpose is to teach the defendant regarding the proceedings, the

terminology employed, the functions of the prosecutor, defense attorney, judge and jury, and to sit with the defendant through[]out the course of the trial to explain to him what is happening, what the significance of the testimony is and to generally assist him in understanding and to participate in his own defense.

Winkle then moved the circuit court to enter a conditional guilty plea on the Commonwealth's revised offer, reserving the right to appeal from the competency ruling. The circuit court accepted Winkle's conditional plea and sentenced him to ten years imprisonment on each count, to run concurrently with each other and with any sentence he might receive in the other felony case, if indicted.<sup>5</sup> This appeal followed.

Winkle presents two arguments on appeal. First, he argues that his rights were violated when he was found "provisionally competent" to stand trial. Second, he argues that his due process rights were violated when he entered a guilty plea without the aid of a second attorney acting in the capacity of a tutor. The Commonwealth disputes Winkle's argument that he was incompetent to stand trial, and asserts that his alternative argument regarding the entry of the conditional guilty plea was not preserved.

We shall only briefly address Winkle's alternative argument that the circuit court erred in allowing the guilty

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<sup>5</sup> In the judgment, it appears that the circuit court mistakenly found Winkle guilty on four counts of criminal abuse, rather than two.

plea and sentencing hearings to proceed without the aid of a “tutor.” We agree with the Commonwealth that this argument is not preserved, as the only issue subject to review in this appeal is whether the circuit court erred in determining that Winkle was competent to stand trial.

We shall now address Winkle’s main argument regarding his competency to stand trial. Winkle argues that the circuit court improperly found him to be “provisionally competent” because KRS 504.090 does not provide for this standard. The statute, he asserts, provides that a defendant is either competent or incompetent, and does not contain a standard for being found “provisionally competent” or for being made competent during trial. The Commonwealth argues that the circuit court did not abuse its discretion based upon the expert testimony introduced.

KRS 504.090 provides that “[n]o defendant who is incompetent to stand trial shall be tried, convicted or sentenced so long as the incompetency continues.” Incompetency to stand trial is defined as follows: “[A]s a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one’s own defense.”<sup>6</sup> The United States Supreme Court addressed the standard for competency to stand trial in

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<sup>6</sup> KRS 504.060(4).

Godinez v. Moran,<sup>7</sup> defining the standard as “whether the defendant has ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ and has ‘a rational as well as factual understanding of the proceedings against him.’”<sup>8</sup> The Supreme Court of Kentucky relied upon the standard as defined in Godinez in its opinion of Bishop v. Moran.<sup>9</sup> The Bishop court also relied upon Godinez for the proposition “that a competent defendant can make a ‘reasonable choice’ among the alternatives available to him when confronted with such crucial questions as whether he should testify, waive a jury trial, cross-examine witnesses, put on a defense, etc.”<sup>10</sup> The burden is on the defendant to prove that he is incompetent by a preponderance of the evidence.<sup>11</sup> A trial court’s decision on competency must be based on findings of fact that are supported by substantial evidence.<sup>12</sup>

In the present matter, the circuit court relied upon and summarized extensively from the respective testimony of Dr.

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<sup>7</sup> 509 U.S. 398, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993).

<sup>8</sup> Id. at 396, quoting Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960).

<sup>9</sup> 118 S.W.3d 159 (Ky. 2003).

<sup>10</sup> Id. at 163.

<sup>11</sup> Jacobs v. Commonwealth, 58 S.W.3d 435 (Ky. 2001); Thompson v. Commonwealth, 147 S.W.3d 22 (Ky. 2004).

<sup>12</sup> Thompson, 147 S.W.3d at 33; Fugate v. Commonwealth, 62 S.W.3d 15, 18 (Ky. 2001); Jacobs, 58 S.W.3d at 441.

Connor and Dr. Simon. Both experts testified that despite his mental ability and understanding of legal proceedings, Winkle was competent to stand trial. Interestingly, his own expert altered his opinion at the competency hearing from his written report after meeting with Winkle prior to the hearing. Because his depression had subsided, Dr. Connor determined that he had met the standard of competency necessary to stand trial. That both experts recommended additional support during the trial and the circuit court actually included the need for a "tutor" to sit at Winkle's side during the trial did not add another standard level to the statute, as Winkle would have this Court hold. The extra attention and support ordered by the circuit court would merely serve to enhance his understanding of the trial proceedings as well as his ability to participate in his own defense. Based upon our review of the record, including the evaluation reports and the videotape of the competency hearing, we conclude that substantial evidence supports the circuit court's findings of fact. Accordingly, the circuit court's determination that Winkle was competent to stand trial was not clearly erroneous.

For the foregoing reasons, the judgment of the Bracken Circuit Court is affirmed.

ALL CONCUR.

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