

12/24/97-1

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

WEDNESDAY

December 24, 1997

MOTION DOCKET

97-414. State v. Spivey.

Mahoning App. No. 89 C.A. 172.

This cause is pending before the court as an appeal from the Court of Appeals for Mahoning County.

In its December 1989 opinion, the trial court (three-judge panel) stated:

"In consideration whether or not the Defendant, at the time of committing the offense because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of his conduct, or to conform his conduct to the requirements of the law, the Court reviewed the admitted reports of Doctors Stanley J. Palumbo, A.J. Giannini and Nancy J. Huntsman. None of the examiners felt that the Defendant suffered from a borderline psychosis. All of them did agree that the Defendant has personality problems. However, the evidence is clear that his personality disorder is not the product of a mental illness or defect. For example, Dr. Giannini found that the Defendant's character disorder does not meet the criteria for a psychiatric organic mental defect. Dr. Palumbo stated that it is his opinion that the Defendant understood the nature and wrongfulness of his actions and that at the time of the event `there was no reason to believe that, in any way, was he [Defendant] unable to prevent his behavior from occurring because of any gross mental disorder.' "

Similarly, the court of appeals' opinion stated:

"It was also admitted, at the mitigation hearing, reports of Dr. J. Stanley Palumbo, Dr. A.J. Giannini, and Nancy Huntsman. None of the examiners felt that the defendant suffered from a borderline psychosis. All of them did agree that the defendant had personality problems; however, it was their joint opinion that his personality disorder was not the product of a mental illness or defect. Dr. Palumbo stated that, in his opinion, the defendant understood the nature and wrongfulness of his actions and that, at the very time of the event, there was no reason to

believe that in any way was the defendant unable to prevent his behavior from occurring because of any gross mental disorder."

This court has reviewed the entire record certified to us by the Clerk of the Mahoning County Court of Appeals and has been unable to locate the reports referenced by the trial court and the court of appeals. Accordingly, counsel for the state of Ohio and for appellant Warren Spivey are ordered to review the entire record in case No. 97-414 and:

1. Locate, if they exist, the reports of Drs. A.J. Giannini, Stanley Palumbo and Nancy Huntsman which are referenced in the opinion of the trial court and the opinion of the court of appeals.

2. Determine whether the reports, if any, are a part of the formal record of this case by way of having been admitted into evidence before the trial court (three-judge panel).

3. File a memorandum, within thirty days of the date of this entry, pointing to a place or places in the record where the reports, if any, have been properly entered into the evidence.

4. File with this court the actual reports, if any, and if admitted.

5. If there are no such reports or if there are reports but they were not admitted into the evidence, then counsel should so state.

Pfeifer, J., dissents.