

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 27, 2023

[Cite as *09/27/2023 Case Announcements #2, 2023-Ohio-3444.*]

APPEALS NOT ACCEPTED FOR REVIEW

2023-0264. State v. McFarland.

Cuyahoga App. No. 111390, **2022-Ohio-4638.**

Brunner, J., dissents, with an opinion joined by Donnelly, J.
Stewart, J., not participating.

BRUNNER, J., dissenting.

{¶ 1} Appellant, Sheila A. McFarland, was convicted in 2017 of two counts of aggravated murder along with related charges. In 2018, the Eighth District Court of Appeals affirmed her convictions but found an error in her sentence based on the trial court's failure to merge allied offenses of similar import. *State v. McFarland*, 8th Dist. Cuyahoga No. 105570, 2018-Ohio-2067, ¶ 1. The appellate court therefore remanded the matter to the trial court for resentencing. *Id.* at ¶ 67. This court accepted jurisdiction over McFarland's discretionary appeal to consider a sufficiency-of-the-evidence issue and ultimately affirmed the Eighth District's judgment. *State v. McFarland*, 162 Ohio St.3d 36, 2020-Ohio-3343, 164 N.E.3d 316, ¶ 21, 53. Thus, McFarland returned to the trial court for resentencing.

{¶ 2} In October 2021, while awaiting resentencing, McFarland filed a motion for leave to file a motion for new trial. She claimed that since receiving psychiatric treatment in prison after her original sentencing, she had discovered that she was misdiagnosed while incarcerated in the county jail before and during her trial. She argued that as a result of her misdiagnosis and the related mental-health treatment, she had not been given the appropriate medication for the mental illness from which she actually suffers and she had not been competent to stand trial. She also

argued that her low IQ and her history of childhood abuse had prevented her from being able to assist in her own defense.

{¶ 3} The trial court does not appear to have addressed McFarland’s motion. Instead, it proceeded to resentence her. In its resentencing entry, the trial court stated that it was denying “as moot” all motions that it had not previously addressed, and that included McFarland’s motion for leave to file a motion for new trial.

{¶ 4} The Eighth District affirmed the trial court’s denial of McFarland’s motion for leave to file a motion for new trial. The appellate court stated that the motion needed to have been filed within 120 days of the jury’s verdict and that after that point McFarland had to show that she was unavoidably prevented from timely discovering the evidence that supported her motion. The appellate court concluded that McFarland did not make this showing even though it did not cite anything in the record regarding the trial court even considering her motion. The Eighth District held that the vast majority of the evidence that McFarland had presented—e.g., medical records and childhood school records—existed and could have been obtained before trial.

{¶ 5} In reaching this conclusion, the appellate court did not meaningfully address the fact that McFarland did not know either before or during her trial that she had been misdiagnosed. Repeatedly, the Eighth District acted more as a trial court than an appellate court when it found no evidence to support McFarland’s claim that she had not been competent to stand trial. The appellate court’s acting more as a fact-finder than as a reviewing court was also problematic because the record lacked any expert testimony that could be challenged by the parties for its reliability. The appellate court went so far as to state that McFarland’s mental-illness diagnosis following her 2017 trial did not establish that she had been *misdiagnosed* before her trial. Finally, and perhaps most concerningly, the appellate court decided that a hearing was not warranted on McFarland’s motion for leave to file a motion for new trial, because her mental-health condition and cognitive deficits were well known at the time of trial.

{¶ 6} McFarland now seeks review of one proposition of law:

Where a delayed motion for new trial is supported by evidence that the defendant’s mental health was severely compromised before and during the time of trial, summary denial of the motion without inquiry concerning the delayed

discovery of that evidence violates the defendant's rights to due process and a fair trial.

{¶ 7} McFarland asserts that a trial court errs and violates the defendant's rights to due process and a fair trial when it summarily denies without a hearing a motion for leave to file a motion for new trial that is based on evidence that the defendant's mental health was severely compromised before and during trial. She argues that the misdiagnosis she received while incarcerated in the county jail prior to trial caused her to receive the wrong medication, which in turn caused her to engage in irrational behavior and that behavior influenced her decision to reject a plea deal that would have resulted in a 5-year prison sentence instead of the 20-years-to-life prison sentence she received after trial. McFarland argues that the trial court should have at least conducted a hearing on her motion to consider the evidence she proffered and whether she had timely discovered it.

{¶ 8} This proposition of law warrants review. First, the trial court's denial of the motion for leave to file a motion for new trial as *moot* is notable and concerning. A trial court's statement that *resentencing* a defendant renders moot that defendant's motion for leave to file a motion for new trial seems little more than obfuscation. A court-ordered resentencing has nothing to do with whether leave should be granted for filing a motion for new trial. Second, the Eighth District, in the absence of any record showing that the trial court had considered the plethora of evidence offered by McFarland, moved into the role of fact-finder when it found that McFarland's motion was untimely and not supported by newly discovered evidence—and when it made the judgment that the evidence McFarland presented in support of her motion was not in fact newly discovered. The Eighth District's basis for upholding the trial court's denial of a hearing on McFarland's motion was not sound and was based solely on its own conclusion that McFarland's mental-health condition and cognitive deficits were well known *at the time of trial*.

{¶ 9} McFarland argues that the discovery of the correct diagnosis for her mental-health condition and her receipt of appropriate medication for that condition occurred *after* her trial when she was imprisoned on the charges for which she had been convicted. In determining whether this court should accept jurisdiction over McFarland's appeal, it would be easy to let skepticism creep in and say that a rearview-mirror consideration by a conventional defendant is nothing more than remorse for not taking a plea deal that turned out to be better than the outcome

at trial. But McFarland is not a conventional defendant. She raises troublesome questions about whether she was competent to consider the plea offer. Was she impaired by the medication she was given at the time of trial, which she asserts was later medically determined not to be right for her? Or did the medication negatively affect an underlying condition that was diagnosed by prison doctors but not by jail doctors? Because the majority declines to accept jurisdiction over McFarland's appeal, our state's criminal-justice system will not answer these questions and determine whether McFarland's legal and constitutional rights were impacted.

{¶ 10} Some would suggest that McFarland's situation is such a rare occurrence that it is not a matter of great general or public interest for this court to decide. But research suggests otherwise. Recent research suggests a correlation between brain health and criminal activity. *See, e.g.,* Ling, Umbach, & Raine, *Biological Explanations of Criminal Behavior*, 25 *Psychology, Crime & Law* 626 (2019). And research suggests that substance abuse combined with mental illness is "an important risk factor in violence and re-offending." Pickard & Fazel, *Substance Abuse as a Risk Factor for Violence in Mental Illness: Some Implications for Forensic Psychiatric Practice and Clinical Ethics*, 26 *Current Opinion in Psychiatry* 349, 351 (2013).

{¶ 11} And when the wrong medication is prescribed for an existing mental illness, a person's perception of reality and the actions taken in response to that perceived reality have been shown to result in negative consequences. According to a recent academic discussion,

[o]verdiagnosis and misdiagnosis can have serious consequences for individuals involved in the criminal justice system.

For example, if someone is incorrectly diagnosed with a mental health condition, they may be prescribed medication or treatment that is unnecessary or potentially harmful. If under the wrong treatment plan it could impact an individual's perception of reality and actions. Alternatively, if someone with a mental health condition is not properly diagnosed, they may not receive the treatment they need, leading to further negative consequences.

(Citation omitted.) Larsen, *Mental Health and Crime: The Issue of Misdiagnosis and Overdiagnosis*, <https://sites.bu.edu/daniellerousseau/2023/02/25/mental-health-and-crime-the-issue-of-misdiagnosis-and-overdiagnosis/> (accessed August 28, 2023) [<https://perma.cc/Q5LL->

2V79]. Factors that contribute to overdiagnosis and misdiagnosis of mental-health conditions in the criminal-justice system include “the lack of training and expertise among some professionals in the criminal justice system, such as police officers or judges, in recognizing and diagnosing mental health conditions.” *Id.* There is also “the stigma surrounding mental health, which can lead to biases and stereotypes that influence diagnoses.” *Id.* And “the pressure to quickly resolve cases in the criminal justice system can also lead to hasty diagnoses and inaccurate conclusions.” *Id.*

{¶ 12} Courts should acknowledge our limited understanding of how the brain works. Notably, the United States government has initiated a coordinated effort among public and private institutions and agencies known as the *Brain Research Through Advancing Innovative Neurotechnologies* Initiative (the “BRAIN Initiative”). The BRAIN Initiative is a collaboration between federal and nonfederal partners with a common goal of accelerating the development of innovative neurotechnologies in aim of producing a “revolutionary new dynamic picture of the brain that, *for the first time*, shows how individual cells and complex neural circuits interact in both time and space.” (Emphasis added.) See National Institutes of Health, *Overview*, <https://braininitiative.nih.gov/about/overview> (accessed August 28, 2023) [<https://perma.cc/VXL7-TW7G>].

{¶ 13} The issues that are so often observed in people incarcerated—substance abuse, mental illness, and combinations of each—are matters of great general and public interest because they affect families, communities, crime rates, public health and safety, the use of taxpayers’ dollars, and the legal and constitutional rights of criminal defendants. Review of McFarland’s proposition of law should be granted so we can address whether as a result of her mental illness and misdiagnosis, she was incompetent to stand trial.

{¶ 14} As noted by the United States Supreme Court, “[i]t has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.” *Drope v. Missouri*, 420 U.S. 162, 171, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975). The questions still burn in McFarland’s case: Was she competent to stand trial? Should she have been denied leave to file a motion for new trial based on her alleged incompetency to stand trial? With the majority’s decision not to accept jurisdiction over McFarland’s appeal, we will never know, and people in the criminal-justice system who have

been misdiagnosed or overdiagnosed will never know either. The issues raised in McFarland's proposition of law are a matter of great general and public importance.

{¶ 15} Because the majority does not accept jurisdiction over McFarland's appeal, and for the reasons I have stated, I respectfully dissent.

DONNELLY, J., concurs in the foregoing opinion.
