An Incompetent Juvenile Need Not Be Mentally Ill

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Juveniles are entitled to due process of law pursuant to the Sixth Amendment to the United States Constitution and Article 2, Sections 4 and 24 of the Arizona Constitution. *See, e.g., In re Timothy M.*, 197 Ariz. 394, 398 ¶ 16, 4 P.3d 449, 453 (App. 2000). The juvenile court's "jurisdiction must be exercised in accordance with due process standards." *In re Richard M.*, 196 Ariz. 84, 86-87 ¶11, 993 P.2d 1048, 1050-51 (App. 1999). It violates due process for an incompetent person to participate in proceedings designed to determine whether such person engaged in unlawful conduct. *Bishop v. Superior Court*, 150 Ariz. 404, 406, 724 P.2d 23, 25 (1986). Thus, "[a] juvenile shall not participate in a delinquency, incorrigibility or criminal proceeding if the court determines that the juvenile is incompetent to proceed." A.R.S. § 8-291.01(A) (Juvenile mental-competency proceedings are governed by A.R.S. § 8-291 *et seq*). Further, incompetent juveniles should not languish in the courts – "[i]f the court initially finds that the juvenile is incompetent and there is not a substantial probability that the juvenile will be restored to competency within two hundred forty days, the court shall dismiss the matter with prejudice[.]" A.R.S. § 8-291.08(D).

A child can be incompetent even if he does not suffer from a "mental disorder or disability."

A juvenile is "incompetent" if the child does not have sufficient present ability to consult with the juvenile's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the juvenile." A.R.S. § 8-291(2). This definition, by its very wording, does not require a mental illness. Thus, a child can be incompetent even if he does not suffer from a "mental disorder or disability." *In re Charles B.,* 194 Ariz. 174, 177, 978 P.2d 659, 662 (App. 1998).

Despite this, prosecutors in Maricopa County are arguing that all juveniles who are not mentally ill are not incompetent. In so doing, they ignore constitutional and legislative protections of an incompetent child's due process right to participate in delinquency proceedings. They justify their position by contending that a criminal conviction is not at stake in typical juvenile-delinquency proceedings. But as we know, juvenile delinquency determinations have many significant consequences. For example, a juvenile with two prior and separate felony-level delinquency determinations, accused of another felony, is subject to mandatory criminal prosecution if 15, 16, or 17 years of age, and is subject to criminal prosecution at the prosecutor's discretion if 14 years of age. A.R.S. § 13-501(A)(6), (B)(5), (G)(2). Furthermore, the purpose of juvenile-delinquency court is not merely rehabilitation, but also protection of the community. *In re Niky R.,* 203 Ariz. 387, 391, 55 P.3d 81, 85 (App. 2002). Where protection of the community is an issue, the juvenile court may order any delinquent child incarcerated at the Arizona Department of Juvenile Corrections for any period of time until such child's eighteenth birthday. A.R.S. §§ 8-341(A)(1)(e), (L). Indeed, the United States Supreme Court found that the stakes in juvenile court are high, warranting due process protections. *Breed v. Jones*, 421 U.S. 519, 530 (1975).

Prosecutors argue that children who are not mentally ill simply are young and immature, and that youth and immaturity do not amount to a lack of competence to participate in juvenile court, which, after all, exists to serve those who are younger and less mature than adults. In effect, they contend that, for

purposes of mentalcompetency determinations, all children who are not mentally ill are all alike and competent. Not surprisingly, findings of mental competency evaluators in Maricopa County contradict the prosecutors' position. For example, in a recent case, a juvenile suffered from a language processing and usage disorder that rendered him incompetent. This disorder was independent of his age. In this way, then, there was a fundamental difference between this child and others his age. Obviously, not all similarly-aged youths who lack a mental illness are alike with respect to mental competency.

Similarly, not all incompetent children are alike with respect to restorability. If an incompetent child "may be restored to competency, the court shall order that the juvenile undergo an attempt at restoration to competency." A.R.S. § 8-291.08 (C). However, the court must terminate restoration if, during the restoration process, the court finds "that there is no substantial probability that the juvenile will regain competency before the expiration" of the restoration time. A.R.S. § 8-291.10(B)(3), (G). Furthermore, a court shall not order restoration for a child where "the court initially finds that the juvenile is incompetent and there is not a substantial probability that the juvenile will be restored to competency within two hundred forty days[.]" A.R.S. § 8-291.08(D). Clearly, then, restoration is only for those juveniles substantially likely to become restored.

Prosecutors, however, sometimes argue that all incompetent children who are not mentally ill must be ordered into restoration. In addition to contradicting express legislative provisions, such a result wastes taxpayer money. An attempt at restoration of a child without a substantial probability of restoration is like placing a very expensive losing bet. Moreover, placement of a child into a restoration program in which he very likely cannot succeed does not serve the child's welfare.

The prosecutors' position essentially is that, in enacting A.R.S. § 8-291 *et seq.*, our legislature defined competency in a way that somehow is contrary to established legal principles. The United States Supreme Court, however, defined competency as one's "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960). Our legislature adopted this definition: "'Incompetent' means a juvenile who does not have sufficient present ability to consult with the juvenile's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the juvenile." A.R.S. § 8-291(2). Nowhere in this definition is there a requirement of mental illness. Thus, neither A.R.S. § 8-291 *et seq.*, *Dusky*, nor any other legal authority applicable to juvenile delinquency mental competency determinations in Arizona, require a mental illness.

Prosecutors sometimes cite the provision in A.R.S. § 8-291.08(D) that, if a court finds a child incompetent and not restorable, the court "shall initiate civil commitment proceedings, *if appropriate*." (emphasis added) Prosecutors argue that, because civil commitment proceedings are for the mentally ill, only mentally ill children can be incompetent. This is a logical fallacy. Prosecutors overlook the "if appropriate" language in A.R.S. § 8-291.08(D). When the "if appropriate" language is read, it becomes apparent that any given incompetent child may or may not be mentally ill. If the child is mentally ill enough for such illness to make him incompetent, civil commitment would be appropriate. If the child is not mentally ill, civil commitment would not be appropriate.

As a matter of due process, an incompetent child must not participate in juvenile delinquency proceedings. Neither the Arizona legislature, the United States Supreme Court, nor any other applicable authority require that

a child be mentally ill in order to be incompetent.

Criminal Proceedings: New Findings

As a matter of due process, a juvenile facing criminal charges, pursuant to A.R.S. § 13-502 or A.R.S. § 8-327, "shall not be tried, convicted, sentenced or punished" if such juvenile is incompetent. Rule 11.1, Arizona Rules of Criminal Procedure; *see also Bishop*, 150 Ariz. at 406, 724 P.2d at 25. Such a juvenile is deemed incompetent only if, "as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense." Rule 11.1, Arizona Rules of Criminal Procedure. However, a new study released in March of 2003 and funded by the MacArthur Foundation contains some significant findings. The report found that a portion of juveniles aged 15 years and younger who are not mentally ill and not mentally retarded lack the capacity to understand the criminal court process and to meaningfully consult with an attorney. (T. Grisso, et al, Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants.

The study was the first-ever large-scale study inquiry into whether youths can be incompetent due merely to intellectual and emotional immaturity. More than 1,400 youths between 11 and 24 years old participated in the study. Very few had serious mental disorders.

Findings that resulted from the study include the following: Youths aged 16 years and older did not differ significantly from adults with respect to competency. Youths aged 14 and 15 years were twice as likely as adults to be incompetent due merely to intellectual and emotional immaturity. Youths aged 11 to 13 years were three times as likely to be incompetent due merely to intellectual and emotional immaturity. Seven percent of those aged 16 to 17 years, nine percent of those aged 14 to 15 years, and 16% of those aged 11 to 13 years were significantly impaired with respect to ability to understand criminal proceedings and consult meaningfully with an attorney.

Youths with IQs under 85 were significantly more likely to be incompetent. Youths from impoverished backgrounds were slightly more likely to be incompetent. Gender and ethnic difference among study participants did not contribute to significant differences with respect to competence.

The authors of the report of the findings that resulted from the study concluded the following:

> "Questions about how minors function as criminal defendants compared to adults go beyond those that are captured by the narrow focus of the ordinary competency inquiry. … [T]hose who deal with young persons charged with crimes – particularly their attorneys – should be alert to the impact of psychosocial factor on youths' attitudes and decisions, even when their understanding and reasoning appear to be adequate. Deficiencies in risk perception and future orientation, as well as immature attitudes toward authority figures, may undermine competent decision making in many that standard assessments of competence to stand trial do not capture." *Id.* at 37-38

In addition to the above findings, there are now significant neurological studies being done that map the growth of the juvenile brain through P.E.T. scans, M.R.I.s and C.A.T scans. The information coming out of those studies and its relationship to juvenile development are truly astounding. It may be that, in the near future, we will have scientific evidence that demonstrates to the court what defense attorneys and parents have known for so long, that juveniles are fundamentally different from adults and even from each other. You cannot just lump them all together and expect that one particular rule applies to them all.

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