

10/28/08

Status of Marco Chapman

After the original opinion was issued by the Supreme Court affirming the plea and sentence, DPA filed a petition for rehearing, or alternatively, for modification, asserting that the Court got the competency standard wrong. The Supreme Court then denied the rehearing, but granted the modification, and issued a new opinion more or less adopting DPA's position as to the standard. Even though that was not the standard used in the lower court, the Supreme Court nevertheless refused to change the holding, finding that the use of the proper standard would not have had made a difference in the outcome. Because modification was granted, the new opinion was not final, and DPA has filed a motion challenging the Court's conclusion that the application of the proper standard would not have changed the outcome. The KY Supreme Court entered an Order on October 23, 2008 denying the request for further relief and issuing a Mandate that sets the date of execution on November 21, 2008. (In other words, this is not a situation where the Governor has to sign an execution warrant for there to be an execution). A request to stay the Mandate of Execution was filed in the KY Supreme Court on October 27, 2008.

Chapman has filed a Declaratory Judgment action in Franklin Circuit Court asking to have DPA attorneys removed from his case and a request to prohibit them for further representing him. The judge has asked for an expert to do a competency evaluation to see if he is competent to make such a decision. Chapman has agreed to this on the belief that he will be found competent and then be able to be executed. DPA attorneys have provided the judge with several nationally recognized experts to evaluate him. At an October 23, 2008 hearing before Special Judge Roger Crittenden the Attorney General sought to intervene into the case saying that Chapman has previously been evaluated three times. Those were done at KCPC by Dr. Steven Free. Judge Crittenden gave attorneys until Oct. 31 to file legal briefs on whether the Attorney general has the legal right to intervene. He set another hearing in the case for Nov. 7 and ordered that the evaluation proceed as agreed with Dr. Michael Ray Harris, of Louisville, who has specialized knowledge of depression. Chapman has a mental health history of depression, including trying to commit suicide when he was younger.

Attached is a statement of the case from the appeals brief, which contains a description of the case and some of his mental health history.

In the present posture the Governor cannot order the execution to be stopped but he can grant clemency.

Attached is information on clemency nationally and in KY.

STATEMENT OF THE CASE

Marc Chapman has endured a "very chaotic" life beginning from the time he was an infant. Stand-by Counsel's Motion for Court to Consider Attached Sealed Document in Sentencing Deliberation and Report of Ed Connor (Sealed Exhibit, hereinafter referred to as such). Even as a baby he was depressed because of the emotional detachment of his mother and father. Id. His parents suffered from depression, serious alcohol abuse and mental disorders. Tape 9, 10/1/04, 9:49:33 -50, 10:01:55 – 10:31:43. They were violent with each other and with Chapman. Sealed Exhibit. He was sexually abused by his father. Id. His father sexually abused him and routinely beat him unconscious. Tape 9, 10/1/04, 9:49:33 -50, 10:01:55 – 10:31:43. His mother hit him on the head with a cast iron skillet. Id. They gave him alcohol in his baby bottle. Id. A babysitter molested him. Sealed Exhibit.

He began to smoke marijuana and drink alcohol when he was only eight years old. Sealed Exhibit. He became sexually active and suicidal even though he was still a child. Id. But his problems were only exacerbated as he grew older. When he was a teen, a gang of boys attempted to assault him sexually in a juvenile prison. Id. His drug and alcohol abuse got worse. Id.

All of this caused Chapman to experience dissociative states. Sealed exhibit. His dissociative episodes increased in frequency over time. Id. He suffered from depression, substance abuse, and from being sexually abused for years. Tape 9, 10/1/04, 9:49:33-50, 10:01:55–10:31:43. His dysfunctional life predisposed him to the substance abuse and to mental illness. Id. Conduct disorders and dysthymia plagued him. His emotional disturbance had physical manifestations. Id. He had flashbacks, a racing mind and an

inability to focus. Id. Racing thoughts, dramatic mood swings and depression are all symptoms of Bi-polar Disorder. Id. Suffering from a major depression and post-traumatic stress, he attempted suicide at the age of 14 by hanging himself and cutting his wrists. Id. By this time he had added LSD, embalming fluid and PCP to the other substances he abused. Id. He had recurrent thoughts of suicide. Id. He also had gender identity issues. Id.

Chapman could not control his actions and continued to have gender identity confusion even after he became an adult. Id. He abused heroin, cocaine, crack, and methamphetamine, and drank alcohol in binges. Id. He was in acute psychological turmoil suffering from substance dependence, Dysthymic Disorder, Post-traumatic Stress Disorder, intrusive thoughts, odd sensory experiences, including visual and auditory hallucinations, dramatic mood swings, troubling thoughts and dreams, and personality disorders (he had symptoms of both Borderline and Anti-social Disorder). Tape 9; 10/1/04; 9:48:18–9:49:33; 10:52:50–10:54:09, Sealed Exhibit A - Tape; 10/13/04; 10:58:15, Tape 10, 10/21/04, 3:20:40-3:26:15. He had symptoms of depression. Id. His insight and judgment were impaired. Id.

Chapman had a preoccupation with suicide and almost daily thoughts of killing himself. Id. He felt hopeless and worthless. Id. Persons with similar psychological profiles exhibit psychotic symptoms and an impaired contact with reality. Id.

On August 23, 2002, Chapman entered the home where Carolyn Marksberry, resided with her children, Cody, 6 years old, Chelbi, age 7, and Courtney, age 10. Tape 12; 12/14/04; 3:02:25. Cody was stabbed in the back and his neck was slashed. Chelbi's throat was also slashed. Both children died. Chapman attempted to kill Courtney by

repeatedly stabbing her, but she survived by falling to the ground and pretending to be dead. As she was lying on the floor she saw Chapman kill Cody. Their mother was raped. She was also stabbed repeatedly with multiple knives that Chapman retrieved from the kitchen after some of them broke. She remained alive by pretending to be dead. When Carolyn was found she was bound with duct tape and had been tied to a bed frame with a vacuum cleaner cord. Her clothing had been cut off. Id.

At the time the crimes were committed Chapman may have been suffering a dissociative episode while he was very intoxicated on alcohol and drugs. He was still suicidal and under the influence of all of the mental illnesses that began in childhood. Sealed Exhibit.

Chapman's suicidal preoccupation continued and intensified after the commission of the crimes. He asked the officer who arrested him to shoot him in the head to be "down [sic] and over with it." Commonwealth Exhibit #1, page 3. He told the officer that if he had the opportunity at the time he was apprehended he would have killed himself by taking sleeping pills he had in his possession. Id., 5. He said the only thing that would help him would be a bullet or the electric chair. Id., 13. He tried to escape from a deputy sheriff before a pre-trial hearing so he would be shot. Tape 4; 1/14/03; 12:47:20, Tape 10, 10/21/04, 3:20:40-3:26:15. He pleaded with the deputy, "Shoot me, shoot me!" Tape 6; 3/24/04; 12:20:50. Dr. Steven Free, a psychiatrist at the Kentucky Correctional Psychiatric Center, said Chapman told him this was a suicide attempt. Tape 10; 10/21/04; 3:20:40-3:26:15. Chapman also told Dr. Free that he contemplated suicide depending on the course of the case. Id. He said he wanted to commit "suicide by court." Tape 10; 10/21/04; 15:33:10.

On October 13, 2004, Chapman told the court that he wanted to fire his attorneys, waive his trial, plead to all the crimes charged and be put to death. "Sealed Exhibit A," Tape, 10/13/04, 10:58:18. Even before Chapman did this, Dr. Free, who had evaluated him earlier for competency to stand trial, said Chapman should be treated for his depression. Tape 9; 10/1/04; 9:48:1—9:49:35. Dr. Free later said Chapman's plea for death could be caused by Chapman's depression and that he had "less certainty" about his conclusion of competency. A better determination could be made after Chapman was treated. Tape 10; 10/21/04; 3:04:20, 3:43:10. The depression would likely impact Chapman's decision-making process. Tape 11; 12/07/04; 2:52:00, 3:16:30, 3:22:00, 3:24:00. He thought Chapman might decide not to ask for death if he were treated. Tape 10; 10/21/04; 15:36:00-15:37:35. The court ordered the treatment at KCPC before a decision on competency would be made. Tape 10; 10/22/04; 9:05:00.

The only "treatment" Chapman ended up receiving was the drug Zoloft. But Chapman told Dr. Free at the time of his release from KCPC, just before he asked to be killed, that the Zoloft was not working. Tape 11; 12/07/04; 2:42:10, 3:12:00. He was still depressed. Despite ordering treatment, the court gave no consideration to the lack of it when it allowed Chapman to fire his attorneys and waive his right to a trial so he could plead to death. Tape 11; 12/07/04; 3:40:53.

The prosecutor prepared for Chapman a "motion to enter guilty plea." TR IV, 508-514; Tape 11, 12/7/04, 4:26:00. Although Chapman did not want counsel to represent him, and the attorneys did not want to participate in what they believed was a suicide, the trial court compelled them to remain as stand-by counsel. *Id.*, 4:02:27.

On December 7, 2004, Chapman was allowed to plead guilty to all charges - two counts of murder, two of attempted murder, first degree rape, first degree robbery, first degree burglary, and for being a persistent felony offender in the second degree. Tape 11; 12/07/04; 4:28:30. After hearsay testimony from Kentucky State Police Detective Todd Harwood about the crimes and aggravating circumstances, and from Carolyn Marksberry about the impact of the crimes, Chapman was sentenced on December 14, 2004. The court declined to consider mitigating evidence tendered by stand-by counsel. Tape 12; 12/14/04; 3:28:25. It also told Chapman that he was free to choose death as his sentence. Tape 12; 12/14/04; 3:28:25. Chapman expressed remorse for his crimes although he said he didn't remember exactly what happened. Id. at 3:37:20. Chapman was sentenced to death for the two counts of murder, life imprisonment the rape and, in light of the PFO enhancement, life imprisonment for each of the attempted murder, robbery and burglary counts. Id. at 3:31:30. The Final Judgment was entered on December 17, 2004. TR 4, 518. The Notice of Appeal followed on January 13, 2005. TR 4, 538.