

DEATH PENALTY

State v. Haugen, 266 P.3d 68 (Or. 2011)
Oregon Supreme Court

FACTS

Gary Haugen was convicted of aggravated murder and sentenced to death. In Oregon, death sentences are automatically reviewed by the Oregon Supreme Court on what is called “direct appeal.” The Oregon Supreme Court affirmed on direct appeal, so the trial court judge had to decide whether to issue a death warrant.

Haugen wanted to waive all challenges to his sentence of death, but his lawyers argued that he was not competent to do so. Against their client’s wishes, his lawyers filed a motion to have Haugen declared incompetent, and used as supporting evidence an evaluation of Haugen by a neuropsychologist, who had said that Haugen was not competent.

At the hearing, the judge first considered a motion by Haugen himself to dismiss his lawyers and self-represent. Over his lawyer’s objections, the judge found that Haugen was competent and therefore dismissed his lawyers, retaining them only to serve as “stand by counsel,” meaning they could only give legal advice to Haugen as he requested it. The judge then found that Haugen was competently waiving his challenges to his death sentence and issued a death warrant.

At this point, the Oregon Capital Resource Center (hereinafter “OCRC”) filed with the Oregon Supreme Court for a writ of mandamus on the grounds that the trial court judge had not made sufficient inquiry into Haugen’s competence. The OCRC also used the findings by the neuropsychologist as supporting evidence for its motion. Haugen’s discharged lawyers submitted a letter in support of the OCRC’s petition, but the state opposed on the grounds that neither OCRC nor Haugen’s discharged lawyers had standing, since neither represented Haugen anymore.

The Oregon Supreme Court agreed with the state that the OCRC had not made a sufficient showing of authority to bring their proceeding, but also ruled that Haugen’s discharged lawyers did have authority to challenge Haugen’s competency to discharge them. The court thus chose to view the discharged lawyers’ letter as a petition for an alternative writ in challenge of the trial court judge’s findings and rulings on competency. The court issued an alternative writ of mandamus to the trial court judge, which said that the trial court judge had failed to follow certain statutory procedures before discharging Haugen’s lawyers. The writ ordered the trial court judge to correct this by having the Oregon Health Authority assess Haugen’s mental capacity to make legal decisions. The writ also ordered the judge to hold an evidentiary hearing that would allow Haugen’s lawyers to offer evidence regarding Haugen’s competency. At the hearing the trial judge had to advise Haugen of his right to counsel, advise Haugen of the consequences of not pursuing a further legal challenge, determine whether Haugen competently wanted to waive his right to counsel, and make findings as to whether Haugen had a mental condition that would prevent him from understanding his death sentence.

Haugen objected to the alternative writ issued by the Oregon Supreme Court. Specifically, he objected to the reinstatement of his lawyers as representing him, and to the disclosure of the findings of the neuropsychologist. Haugen requested new counsel to represent him on the issue of the disclosure of the findings of the neuropsychologist, since he felt his

lawyers had violated their ethical obligations by releasing his medical information without his consent.

The Oregon Supreme Court informed Haugen that copies of his objections would be provided to the trial court judge, and that his request for new counsel to represent him on the issue of the disclosure of medical information was being forwarded to the Office of Public Defense Services.

The trial court judge chose to comply with the writ issued by the Oregon Supreme Court rather than try to show cause for not complying. Haugen again asked the trial court judge to dismiss his counsel. This time, though, he did not ask to proceed by representing himself; instead, he requested new counsel. The trial court judge found that there was a conflict of interest between Haugen and his lawyers, and dismissed the lawyers again. New lawyers were appointed. Haugen's original lawyers appealed to the Oregon Supreme Court but were denied.

The Oregon Supreme Court, satisfied that its directives to the trial court judge were being fulfilled, dismissed its alternative writ. The trial court judge proceeded to have the Oregon Health Authority assess Haugen, and to hold a hearing which allowed the parties to submit evidence on the issue of Haugen's competency. Haugen's new lawyers did not attempt to submit the findings of the neuropsychologist. The findings of the Oregon Health Authority were the only evidence submitted on the issue of Haugen's competency. At the end of the hearing, the trial court judge found that Haugen was competent to waive his challenges to his conviction and death sentence.

The OCRC, dissatisfied with what had occurred, filed a request with the Oregon Supreme Court to issue an order enforcing the alternative writ of mandamus, arguing that the evidentiary hearing had not complied with the alternative writ of mandamus.

HANDOUT QUESTIONS

1. In your deliberations as a justice on the Oregon Supreme Court, explain how the following facts would or would not affect your decision:
 - a. The neuropsychologist's assessment contains detailed information about Haugen's decades-long struggle with severe mental illness and heroin abuse, including hearing voices and experiencing delusions far removed from reality.
 - b. At the evidentiary hearing, no evidence was presented that indicated Haugen might not be competent. The only evidence presented was evidence indicating he was competent, even though there was evidence available that he was not competent.

2. After reading the actual opinion, answer the following:
 - a. How did the Oregon Supreme Court rule?
 - b. Can you think of other arguments OCRC could have made that might have prevailed?
 - c. Do you think the court took seriously enough the argument that the evidentiary hearing was flawed because the neuropsychologist's assessment was not taken into account?
 - d. If you were on the Oregon Supreme Court, would you have joined the majority or the dissent? Why?

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ISSUES

Does OCRC have standing to bring its petition to the Oregon Supreme Court, being as it is not a party to the case?

Should the Oregon Supreme Court issue an order enforcing its alternative writ of mandamus, which it has dismissed?

WHAT HAPPENED AT TRIAL?

At trial, Haugen was convicted of aggravated murder and received a death sentence. What makes Haugen's case relatively unique is that on appeal, he wanted to drop all legal challenges to his conviction and death sentence and go ahead with the execution. The subsequent litigation revolved around whether or not Haugen was competent to make this decision, particularly since he has a history of mental health issues and heroin abuse. Haugen has not been executed because Governor Kitzhaber has issued a moratorium on all executions for the remainder of his term in office.

HOW DID THIS CASE REACH THE OREGON SUPREME COURT?

In Oregon, Oregon Supreme Court automatically reviews all death sentences because of the seriousness of involved in an execution. In Haugen's case the Oregon Supreme Court

affirmed the conviction and death sentence, so the case went back to the trial court judge to decide whether or not to issue a death warrant. Then Haugen decided he wanted to drop the legal challenges to his conviction and death sentence, prompting OCRC to file a petition with the Oregon Supreme Court to intervene.

ARGUMENTS

Argument for OCRC:

1. The trial court judge did not comply with the Oregon Supreme Court's alternative writ of mandamus because the lawyers which Haugen sought to discharge did not have opportunity to present evidence at the evidentiary hearing.
2. The trial court judge did not comply with the alternative writ of mandamus because that writ required the trial court judge to take into account the neuropsychologist's assessment of Haugen's competency in the evidentiary hearing, which the trial court judge did not do.
3. The trial court judge did not comply with the alternative writ of mandamus because the evidentiary hearing that was held was not adversarial. That is, it did not involve one side presenting evidence that Haugen was incompetent, and the other side presenting evidence that he was competent.
4. Because the evidentiary hearing was not adversarial, it violated the due process clause under *Panetti v. Quarterman* and *Ford v. Wainwright*.

Opposing argument:

1. The writ did not confer any particular duty to appear or offer evidence on the lawyers Haugen sought to discharge in any other capacity than as his lawyers. Since the lawyers were excused from their duties on account of having a conflict of interest, they were no longer in a position to offer evidence at the hearing.
2. The writ did not explicitly require the trial court judge to consider the neuropsychologist's assessment. The writ required the trial judge to hold an evidentiary hearing, which he did, and to allow Haugen's lawyers –Haugen was represented by new counsel at the hearing– to offer evidence, which he did. Haugen's new counsel pursued a different legal strategy than the previous lawyers had, and did not seek to offer the neuropsychologist's assessment, which was within their discretion.
3. The writ only required that the evidentiary hearing allow the parties to offer evidence; it did not stipulate what type of evidence must be offered. Both parties, the state and Haugen (represented by new counsel), were free to offer the evidence they wished.
4. The argument for the OCRC is based on an erroneous reading of *Panetti* and *Ford*. Under these two cases, when a prisoner seeking a stay of execution can make a "substantial threshold showing of insanity," the due process clause of the U.S. Constitution then requires that a hearing be held in which both sides are able to put on evidence. Thus, the procedure the trial court judge followed in this case pursuant to the writ in no way offended constitutional standards.

WHO WON?

The state won. The Oregon Supreme Court did not decide the threshold issue of whether the OCRC had standing to bring its petition, because it could easily dismiss the arguments for the OCRC on the merits. The court ultimately concluded there was no need to issue an order enforcing the dismissed alternative writ of mandamus.

HOW THE COURT EXPLAINED ITS DECISION

Although two justices argued in their dissenting opinions that it was extremely important for the trial court judge to consider all of the evidence relevant to deciding whether or not Haugen was competent, i.e. the neuropsychologist's assessment, the majority opinion came to the conclusion that no procedural errors had occurred. The majority agreed with the dissenters that standards must be very high when the state is contemplating executing a person, but was nonetheless unable to agree with the arguments for the OCRC.

Although the OCRC probably did not have standing to bring its petition to begin with, the court still entertained the arguments on the merits, and concluded that the trial court judge had in fact fully complied with the alternative writ of mandamus.

APPLICATION

This case addresses important issues around the death penalty, specifically:

1. To what extent organizations opposed to the death penalty (such as OCRC) can intervene in actual cases to try to prevent executions from happening.
2. How much control a defendant facing the death penalty has over his own representation.

Students will recognize that these issues raise serious ethical issues, including:

1. Whether or not those opposed to the death penalty should actively get in the way of a death row inmate who actually wants to be executed.
2. Whether or not a death row inmate who wants to be executed should be executed without further proceedings.

Students should consider the following questions:

1. What other action can the OCRC take to try to stop executions? Should the OCRC have pursued the path it pursued here? Could it have done something differently in Haugen's case?
2. Should Haugen's lawyers continue arguing that Haugen is incompetent? For Haugen's first set of lawyers, this was found to be a conflict of interest since Haugen wanted to be executed. If a lawyer's job is to represent the client's interests, what are Haugen's interests here? Is it in Haugen's interests to be executed or not to be executed? Does the answer depend on whether or not the lawyer truly believes Haugen is competent or incompetent?