DIVISION ONE
FILED: 10/11/2011
RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOEL ESCALANTE OROZCO, Petitioner, v. THE HONORABLE SALLY DUNCAN, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, Respondent Judge, STATE OF ARIZONA ex rel. WILLIAM MONTGOMERY, Maricopa County Attorney, Real Party in Interest.	No. 1 CA-SA 11-0191 DEPARTMENT B Maricopa County Superior Court No. CR2007-008288-001DT **DECISION ORDER**

Pursuant to Arizona Revised Statutes ("A.R.S.") section 13-753(I), the court accepts jurisdiction over the petition for special action filed by Joel Escalante Orozco, but denies relief.

The superior court conducted a 21-day evidentiary hearing over an extended period regarding petitioner's motion to dismiss the capital murder charges filed against him. The motion was based on petitioner's alleged mental retardation. The court heard testimony from three experts who evaluated petitioner, petitioner's ex-wife, family members, a former teacher, and cell mates. *See* A.R.S. § 13-753(G) (after

receiving expert reports, the superior court must hold an evidentiary hearing "to determine if the defendant has an intellectual disability").

We review the superior court's ruling for an abuse of discretion, deferring to factual findings that are supported by the record and not clearly erroneous. *See State v. Grell*, 212 Ariz. 516, 528, ¶ 58, 135 P.3d 696, 708 (2006) ("The trial judge has broad discretion in determining the weight and credibility given to mental health evidence.") (citations omitted). Petitioner urges us to evaluate the evidence presented below and reach a conclusion different from the superior court. Appellate courts, however, do not reweigh the evidence to decide whether they would reach the same conclusion as the original trier of fact. *See State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984).

The superior court's minute entry ruling is extremely detailed. It accurately states the record and applies the correct law, clearly addressing the relevant statutory factors. *See* A.R.S. § 13-753(K)(3) (describing an intellectual disability as a condition based on a mental deficit that involves (1) significantly sub-average general intellectual functioning existing concurrently (2) with significant impairment of adaptive behavior (3) where the onset of the foregoing conditions occurred before age 18); -753(K)(1) (defining adaptive behavior as the "effectiveness or degree to which the

defendant meets the standards of personal independence and social responsibility expected of his age and cultural group."); -753(K)(5) (defining "significantly subaverage general intellectual functioning" as a full scale IQ of 70 or lower and requiring the court to "take into account the margin of error" in testing).

The evaluating experts disagreed about the existence of the statutory factors. The superior court explained its rationale for relying on certain opinions over others. There is support in the record for the court's determinations, notwithstanding petitioner's advocacy for a different weighing of the evidence.

Based on the evidence presented, a reasonable trier of fact could conclude that petitioner failed to carry his burden of proving a full scale IQ of 70 or lower by clear and convincing evidence. Evidence of record also supports the determination that petitioner suffers from a learning disability, but is not intellectually disabled and does not suffer from significant impairment of adaptive behavior.

One expert concluded that onset before the age of 18 was evidenced by petitioner's failure to attend formal education beyond second grade. A different expert opined that this was due to cultural and familial norms, where education was neither valued nor supported. Based on the evidence presented, the

superior court could reasonably conclude that petitioner failed to prove an onset of intellectual disability before age 18.

Finally, the superior court thoroughly evaluated whether petitioner's testing utilized "current community, nationally and culturally accepted" procedures. *See* A.R.S. § 13-753(B), (E). The evidentiary hearing focused extensively on this issue, and the court spent considerable time questioning each expert about these issues, discussing the limitations of the testing in its ruling.

Because the superior court's ruling is amply supported by the record and the applicable law,

IT IS ORDERED the requested relief is denied.

/s/
MARGARET H. DOWNIE, Presiding Judge

CONCURRING:

/s/
PETER B. SWANN, Judge

/s/
DONN KESSLER, Judge