

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A20-1232**

State of Minnesota,  
Respondent,

vs.

Nicholas Scott Thompson,  
Appellant.

**Filed July 26, 2021  
Reversed and remanded  
Bryan, Judge**

Jackson County District Court  
File No. 32-CR-18-159

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Thomas J. Prochazka, Jackson County Attorney, Jackson, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Slieter, Judge; and Bryan, Judge.

**NONPRECEDENTIAL OPINION**

**BRYAN**, Judge

In this appeal from the district court's determination that appellant was competent to waive counsel but incompetent to stand trial, appellant argues that the district court erred

by finding that he was incompetent to stand trial. Because the district court failed to apply the proper competency standard, we reverse and remand the competency determinations.

## FACTS

In September 2018, the state charged appellant Nicholas Thompson with three counts of second-degree murder, alleging that he strangled his mother. Since then, the criminal proceedings have centered on the issue of Thompson's competency. Given the issues on appeal, we first summarize the proceedings that have occurred thus far and then address the district court's competency determinations in June 2020.

After he was charged in 2018, Thompson underwent multiple competency evaluations. The evaluators opined that Thompson was not competent to proceed because he lacked the ability to rationally consult with counsel. Thompson objected and requested a contested competency hearing. At a non-evidentiary court appearance in February 2019, the district court concluded that Thompson was incompetent to proceed based on the evaluations. Thompson appealed the decision to this court, arguing that the district court erred by not holding a contested hearing. In an order opinion, this court agreed with Thompson. We reversed and remanded the matter of competency to the district court for the purpose of holding a contested competency hearing.

After remand, the district court set a competency hearing to be held in June 2020. Prior to the hearing, Thompson asked to represent himself. The district court asked Thompson questions regarding the nature of a competency hearing.<sup>1</sup> For instance, the

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<sup>1</sup> The district court inquired of Thompson at a court appearance on June 3, and again prior to the evidentiary hearing on June 9.

district court asked Thompson to describe the competency hearing, and Thompson responded, “the contested competency hearing is where . . . the burden of proof is to prove whether or not I’m competent to stand trial for criminal charges.” When asked what types of evidence would be heard at the hearing, Thompson said, “witness testimony . . . other evidence may be presented . . . documents, reports, and the like.” Thompson also acknowledged that he understood that he would be held to the same standard as an attorney. After finding that Thompson “does understand the nature of today’s hearing and that he wishes to represent himself regarding this hearing,” the district court allowed Thompson to “represent himself as long as he follows [the] rules of decorum and evidence.” In its written order after the hearing, the district court memorialized the basis for its decision, explaining that Thompson was intelligent, able to follow court procedures, able to function when not affected by his false beliefs, and understood the nature of a competency hearing:

The Court considered whether a person who may be incompetent can make a knowing, intelligent waiver of his right to an attorney. The doctors who met with Thompson found him to be intelligent, able to follow court procedures, and able to function very capabl[y] when it did not relate to his false beliefs. Further, Thompson never wavered in his desire to represent himself or in his understanding of what the competency hearing was about.

The district court never considered whether Thompson exhibited a reasonable degree of rational understanding that could enable him to consult with counsel.

At the hearing, the district court asked Thompson to present evidence first. Thompson chose not to call any witnesses, did not present testimony himself, and offered only a single exhibit: a June 2015 request for information from the New Jersey Motor

Vehicle Commission regarding a particular vehicle. The state did not object to the single piece of evidence, but reserved its right to challenge the relevance of this document to a determination of competency. The district court received Thompson's exhibit. The state then presented the testimony of five witnesses, all of whom were forensic examiners who previously evaluated Thompson. The state also introduced into evidence the competency evaluations prepared by those examiners. All the evaluators reached the same conclusion in their evaluations: Thompson was incompetent because he lacked the ability to rationally consult with counsel.

After the contested competency hearing, the district court issued an order memorializing its prehearing determination that Thompson was competent to waive counsel and setting forth its posthearing analysis regarding Thompson's competency to stand trial. Relying on the evaluations and testimony of the five examiners, the district court found that Thompson was experiencing delusional mental disorders. The district court noted that Thompson had repeatedly refused to participate in treatment for his mental illness. According to the district court, Thompson's delusional beliefs about the criminal justice system prevented him from rationally consulting with counsel. The district court found Thompson incompetent to proceed, and Thompson appeals.

### **DECISION**

Thompson argues that the district court erred when it found him incompetent to stand trial. Because the district court failed to apply the correct standard for determining whether Thompson was competent to waive his right to counsel, we conclude that the

district court improperly allowed Thompson to represent himself at the competency hearing.<sup>2</sup>

The United States and Minnesota Constitutions guarantee that a person cannot stand trial if deemed incompetent by a district court. *Godinez v. Moran*, 509 U.S. 389, 396, 113 S. Ct. 2680, 2685 (1993) (citing *Pate v. Robinson*, 383 U.S. 375, 378, 86 S. Ct. 836, 838 (1966)); *State v. Camacho*, 561 N.W.2d 160, 170-74 (Minn. 1997). Likewise, the United States and Minnesota Constitutions guarantee a defendant's right to counsel, and a person cannot waive the constitutional right to representation if incompetent to make that decision. *Godinez*, 509 U.S. at 400, 113 S. Ct. at 2687; *Camacho*, 561 N.W.2d at 170; *State v. Thornblad*, 513 N.W.2d 260, 262-63 (Minn. App. 1994).

The competency standard for a person to stand trial is the same standard as the one used to determine competency to waive the right to counsel. *Godinez*, 509 U.S. at 391, 113 S. Ct. at 2682; *Camacho*, 561 N.W.2d at 171 (quoting *Godinez*, 509 U.S. at 400, 113 S. Ct. at 2682); *see also Thornblad*, 513 N.W.2d at 262-63 (concluding that because the standard for competency to stand trial is the same standard as the one used to determine competency to waive counsel, the district court erred in concluding that the defendant was competent to stand trial but not competent to waive counsel). To determine that a person is competent to stand trial or that a person is competent to waive the constitutional right to

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<sup>2</sup> On appeal, Thompson's counsel argues that the district court erred in finding Thompson incompetent to stand trial because the district court applied different standards for competency to stand trial and for competency to waive counsel. Rather than request remand for another competency hearing, however, Thompson's counsel requests that this court allow him to stand trial. We agree that the district court erred, but to remedy this error, a new hearing is required.

counsel, the district court must make each of the following two conclusions: (1) the person has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding;” and (2) the person has “a rational as well as factual understanding of the proceedings against him.” *Godinez*, 509 U.S. at 396, 113 S. Ct. at 2685 (quoting *Dusky v. United States*, 362 U.S. 402, 402, 80 S. Ct. 788, 789 (1960)); *see also Camacho*, 561 N.W.2d at 171; *Thornblad*, 513 N.W.2d at 262-63.

In this case, the district court did not consider the first part of the required competency standard when it determined Thompson was competent to waive counsel. This contravenes *Godinez*, *Camacho*, and *Thornblad*, which require that courts consider both components of the competency standard when determining competency to waive a constitutional right. We therefore conclude that the district court erred when it deemed Thompson competent to waive his right to counsel because the district court failed to consider and inquire regarding whether Thompson presently exhibited an ability to consult with counsel with a reasonable degree of rational understanding.

In reaching this conclusion, we recognize that while the Minnesota Rules of Criminal Procedure include a person’s ability to “rationally consult with counsel” in the second subdivision regarding competency to stand trial, Minn. R. Crim. P. 20.01, subd. 2, the rules do not explicitly include this in the first subdivision regarding waiver, Minn. R. Crim. P. 20.01, subd. 1. To the extent that the state interprets Rule 20.01, subdivisions 1 and 2, as establishing two different standards of competency, one to waive counsel and a different one to stand trial, we decline to adopt this interpretation based on the rejection of similar arguments in *Godinez*, *Camacho*, and *Thornblad*. *See Godinez*, 509 U.S. at 398,

113 S. Ct. at 2685 (rejecting the Ninth Circuit’s view that the standard for competency to stand trial differs from the standard for competency to waive counsel and declaring that the Ninth Circuit “errs in applying two different competency standards”); *Camacho*, 561 N.W.2d at 172 (rejecting *Camacho*’s request for a differentiation of competency standards and *Camacho*’s suggestion that—unlike the standard for competency to stand trial—the standard for competency to waive counsel need only include “a determination that a defendant would be competent to waive counsel, considering the defendant’s individual ability to comprehend and waive this right”); *Thornblad*, 513 N.W.2d at 262-63 (rejecting the argument that competency to waive counsel must be measured by a different standard than competency to stand trial). We cannot adopt an interpretation of the rules that allows a district court to determine competency without considering the person’s present ability to consult with counsel with a reasonable degree of rational understanding.<sup>3</sup>

Because the district court erred by allowing Thompson to represent himself at the competency hearing, the entire hearing was procedurally invalid.<sup>4</sup> We therefore reverse both of the district court’s competency determinations, and remand to the district court for

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<sup>3</sup> It is not immediately clear whether the state distinguishes between waiving counsel at trial and waiving counsel at a competency hearing. To the extent the state does so argue, we are not convinced that separate standards can apply. We are aware of no authority—and the state cites none—that distinguishes between a constitutional right to counsel at one critical stage in a criminal proceeding from the constitutional right to counsel at a different critical stage in a criminal proceeding. Given the arguments presented to this court and the authority relied on in the parties’ briefs, we decline to adopt a new legal rule today that establishes two different competency standards for waiver of counsel at two different stages of a criminal proceeding.

<sup>4</sup> We note that reversal of the denial of one’s right to counsel or self-representation does not require a showing of prejudice. *Camacho*, 561 N.W.2d at 171 (citing *Flanagan v. United States*, 465 U.S. 259, 268, 104 S. Ct. 1051, 1056 (1984)).

further proceedings, including another competency hearing, with Thompson properly represented by counsel.

**Reversed and remanded.**