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Recent Development: Sibug v. State: When a Defendant is Found Incompetent, a Retrial Does Not Renew His Responsibility to Raise the Issue of Competency; A Judicial Determination of Competency is Required Upon Retrial

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RECENT DEVELOPMENT

SIBUG V. STATE: WHEN A DEFENDANT IS FOUND INCOMPETENT, A RETRIAL DOES NOT RENEW HIS RESPONSIBILITY TO RAISE THE ISSUE OF COMPETENCY; A JUDICIAL DETERMINATION OF COMPETENCY IS REQUIRED UPON RETRIAL.

By: Allison Terry

The Court of Appeals of Maryland held that a defendant who was previously found incompetent must be given a new competency hearing at retrial. *Sibug v. State*, 445 Md. 265, 319, 126 A.3d 86, 116 (2015). In addition, the defendant does not have to raise the issue of competency anew. *Id.* at 317-18, 126 A.3d at 117-18.

In 1999, Mario Sibug (“Sibug”) was charged with multiple counts of assault, reckless endangerment, and weapons offenses following an incident in which he pointed a handgun at his children and threatened to kill them. Before trial, Sibug was found incompetent to stand trial after the Department of Health and Mental Hygiene (“the DHMH”) determined he was suffering from religious delusions and was unable to differentiate between man-made law and God’s law. As a result, Sibug was committed for inpatient care at Clifton T. Perkins Hospital until the circuit court determined he was competent to stand trial.

In April of 2000, the DHMH informed the court that Sibug was competent to stand trial but, shortly after, retracted their statement and informed the court that Sibug’s condition had “deteriorated.” The DHMH sent annual letters to the court concerning Sibug’s competency until 2003, when it asked the circuit court to make its own competency determination. The DHMH followed up with two more letters, in 2003 and January 2004, asserting Sibug’s competency.

In May 2004, Sibug was found guilty and sentenced to time served. However, Sibug was not informed that the conviction would lead to his deportation to the Philippines. As a result, Sibug appealed his conviction and was granted a retrial based on ineffective assistance of counsel. At retrial in September 2008, Sibug repeatedly answered questions by referencing Bible verses. In a seven-page letter to the court, Sibug expressed his belief that he had not violated any state laws because he had obeyed God’s law.

Sibug, through counsel, requested a competency evaluation before sentencing. After giving Sibug the opportunity to present evidence of his incompetency, the trial judge ruled Sibug was competent to stand trial. Ultimately, Sibug was sentenced to ten years in jail.

After sentencing, Sibug filed for post-conviction relief pro se. Sibug appealed to the Court of Special Appeals of Maryland. The intermediate appellate court affirmed the trial court’s decision and held that the circuit court

did not need to determine competency because the issue was not properly raised. Sibug petitioned for a writ of certiorari to the Court of Appeals of Maryland. The petition was granted to determine whether Sibug was entitled to a hearing on competency upon retrial and whether the trial judge erred in finding him competent.

The Court of Appeals of Maryland began its analysis by examining the statutory history of competency determinations, finally arriving at the current Maryland definition of “incompetent to stand trial.” *Sibug*, 445 Md. at 293-99, 126 A.3d at 101-06. Mirroring the federal definition, Maryland defines incompetent to stand trial as “not able (1) to understand the nature or object of the proceeding; or (2) to assist in one’s defense.” *Id.* at 299, 126 A.3d at 106 (quoting Md. Crim. Proc. 3-101(f)). The court further emphasized Maryland’s history of placing importance on the need for a court determination of competency through a hearing on the issue. *Id.* at 301, 126 A.3d at 107 (citing *Roberts v. State*, 361 Md. 346, 363-64, 761 A.2d 885, 894-95 (2000)).

The State relied on precedent to argue that Sibug did not preserve the issue of competency and thus bore the burden of raising the issue “anew.” *Sibug*, 445 Md. at 301, 126 A.3d at 107 (citing *Gregg v. State*, 377 Md. 515, 518, 833 A.2d 1040, 1042 (2003)). The court, however, distinguished *Sibug* from *Gregg* based on the fact that, unlike in *Gregg*, the circuit court was never divested of its jurisdiction. *Id.* at 302, 126 A.3d at 108. The continuous circuit court jurisdiction in *Sibug* eliminated the need for the issue of competency to be raised anew. *Id.*

The court of appeals further relied on *Gregg*, and pointed out that the constitutional issue of competency was already settled in Maryland. *Sibug*, 445 Md. at 304, 126 A.3d at 109 (citing *Gregg*, 377 Md. at 526, 833 A.2d at 1047). The court also stated that the obligation to determine competency rests with the presiding judge and not the defendant. *Id.* As a result, the court held that a retrial did not “renew Sibug’s responsibility to raise the issue of competency prior to trial.” *Id.* at 305, 126 A.3d at 109.

Addressing the issue of whether Sibug needed to be adjudicated incompetent upon retrial, the court looked to other jurisdictions. *Sibug*, 445 Md. at 305, 126 A.3d at 110. The court examined an Alaska case that operated on similar facts to *Sibug* whose statute also mirrored the federal definition of incompetency. *Id.* at 314, 126 A.3d at 112 (citing *Clark v. State*, 338 P.2d 816, 818 (Alaska 1964)). The court agreed with the Alaskan court’s reasoning that due process requires a defendant to get a new hearing on incompetency before retrial. *Id.* Moreover, the court emphasized that the Alaskan statute, similar to Maryland’s, closely mirrored the federal statute, which requires a specific competency hearing. *Id.* at 313-14, 126 A.3d at 115-116 (citing 18 U.S.C.A. § 4244 (1951))(The Maryland statute is even clearer on the need for a judicial decision regarding competency).

Next, the Court of Appeals of Maryland pointed out that the last time a court found Sibug incompetent was in 1999. *Sibug*, 445 Md. at 315, 126 A.3d at 116. In the intervening time period, psychiatrists made the only findings of competency until the 2008 retrial sentencing. *Id.* The responsibility for a

competency determination lies with the court. *Id.* Therefore, Sibug was still incompetent under the court's 1999 finding at the time of his 2008 trial. *Id.* Because a psychiatrist's determination is not sufficient, the court found that there needed to be an "adjudication of competency once Sibug was determined to be incompetent in the same case, in the same court." *Id.*

The court then moved onto the question of the trial judge's competency determination. *Sibug*, 445 Md. at 316, 126 A.3d at 117. The court reasoned that Sibug's testimony during trial reflected the same mental state and belief system the DHMH originally relied on to find him incompetent. *Id.* Further, the letter Sibug submitted to the court at sentencing reflected the same basis for incompetency. *Id.* at 317, 126 A.3d at 117. Given Sibug's behavior during the retrial and its correlation to the previous incompetency determination, the court of appeals found that the trial judge clearly erred in finding Sibug competent to stand trial. *Id.* at 318, 126 A.3d at 118.

In *Sibug*, the Court of Appeals of Maryland held that the trial court retains its responsibility to determine competency upon retrial. This holds true when the initial determination was made in the same court and in the same case. This decision reflects Maryland's history of placing importance on the court's duty to protect due process rights, particularly as it relates to potentially incompetent defendants. While the onus of the decision lies with the court, it will still impact defendants. It is particularly important for defense attorneys to be aware of the competency determinations regarding their clients and ensure their clients are afforded a proper hearing. This concern is especially true in cases similar to *Sibug* wherein the procedural history is convoluted.