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Fourteenth Amendment--The Standard of Mental Competency to Waive Constitutional Rights Versus the Competency Standard to Stand Trial

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FOURTEENTH AMENDMENT—THE STANDARD OF MENTAL COMPETENCY TO WAIVE CONSTITUTIONAL RIGHTS VERSUS THE COMPETENCY STANDARD TO STAND TRIAL

***Godinez v. Moran*, 113 S. Ct. 2680 (1993)**

I. INTRODUCTION

In *Godinez v. Moran*,[1] the United States Supreme Court held that due process does not require a higher competency standard for pleading guilty or waiving the right to an attorney than the standard for competency to stand trial. The Court first concluded that the decision to plead guilty is no more difficult than the sum total of the many decisions required of a defendant who pleads not guilty during the course of a trial.[2] The Court then concluded that the decision to waive counsel requires a mental capacity no higher than that required in the decision to waive the constitutional rights that a defendant forgoes when he elects to plead guilty.[3]

This Note argues that the Court correctly ruled that due process does not require a higher competency standard to waive constitutional rights than the competency standard to stand trial. This Note first argues that the Court properly declined to interpret earlier Supreme Court precedent, most notably *Westbrook v. Arizona*,[4] as compelling a defendant to show greater mental capacity to be deemed capable to waive constitutional rights than that capacity required to enable a defendant to stand trial. Second, this Note demonstrates that the Court's opinion is consistent with the advantages of, and policy justifications behind, the plea bargaining process. Third, this Note illustrates that the Court's decision is consistent with a defendant's Sixth Amendment right to self-representation, as

[1] 113 S. Ct. 2680 (1993).
[2] *Id.* at 2686.
[3] *Id.*
[4] 384 U.S. 150 (1966) (per curiam).

recognized in *Faretta v. California*.[5] Finally, this Note examines the implications the *Godinez* opinion holds for future defendants' collateral challenges based on their alleged incompetency to have waived their constitutional rights.

II. Background

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law."[6] This clause guarantees "the fundamental elements of fairness in a criminal trial" to defendants in state courts.[7] This guarantee of fundamental fairness requires that a defendant, in order to be subjected to any criminal proceedings, possess a satisfactory level of mental capacity to understand and comprehend the proceedings.[8] Once the trial court is convinced that the defendant satisfies this requisite level of competency, the defendant may be put to trial. This guarantee of fundamental fairness during criminal proceedings additionally incorporates those procedural safeguards enumerated in the Bill of Rights that are "essential to a fair trial."[9] Included in these safeguards are the Fifth Amendment prohibition against compulsory self-incrimination and the Sixth Amendment right to the assistance of counsel.[10] Nevertheless, such constitutional rights may be waived by a defendant who is mentally competent to do so.[11] Until *Godinez*, the Supreme Court had never resolved a split in the federal circuits as to whether due process requires a competency standard to waive such constitutional rights that is higher than the competency standard to stand trial.

A. The Legal Standard for Competency to Stand Trial

Courts have long recognized that due process "prohibits the criminal prosecution of a defendant who is not competent to stand

[5] 422 U.S. 806 (1975).

[6] U.S. Const. amend. XIV.

[7] Spencer v. Texas, 385 U.S. 554, 563-64 (1967).

[8] Dusky v. United States, 362 U.S. 402 (1960) (per curiam). *See infra* notes 12-28 and accompanying text.

[9] Gideon v. Wainwright, 372 U.S. 335, 342 (1963).

[10] *See* Malloy v. Hogan, 378 U.S. 1, 6-8 (1964) (prohibition against compulsory self-incrimination); *Gideon*, 372 U.S. at 342-44 (right to counsel).

[11] *E.g.*, Faretta v. California, 422 U.S. 806, 819-20 (1975). *See infra* notes 29-49 and accompanying text.

trial."[12] Generally, due process requires that a defendant, in order to undergo legal proceedings, "have the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in the preparation of his defense."[13] Trial courts have an affirmative duty to conduct an inquiry into a defendant's mental competency when, at any point in the proceedings, any "evidence raises a bona fide doubt as to a defendant's competence to stand trial."[14] Although a defendant's state of mental competency is difficult to assess and quantify,[15] in *Dusky v. United States*,[16] the United States Supreme Court enunciated a legal standard governing the minimum competency required of defendants before they may be put to trial. The *Dusky* Court held that "the test must be whether he has sufficient present ability to consult with his lawyer

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12 Medina v. California, 112 S. Ct. 2572, 2574 (1992). *Accord* Drope v. Missouri, 420 U.S. 162, 171-73 (1975); Pate v. Robinson, 383 U.S. 375, 378 (1966).

This principle is deeply rooted in common law and was recognized by Blackstone. *Medina*, 112 S. Ct. at 2578; Thomas v. Cunningham, 313 F.2d 934, 938 (4th Cir. 1963); Youtsey v. United States, 97 F. 937, 940-46 (6th Cir. 1899). To support his contention that a mentally disturbed defendant should not be tried, Blackstone argued:

> If a man in his sound memory commits an offence, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried: for how can he make his defence?

4 WILLIAM BLACKSTONE, COMMENTARIES *24. Another commentator from Blackstone's era, agreeing that a defendant of unsound mind should not be tried for a criminal offense, explained that:

> [I]f a man in his sound memory commits a capital offense, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such his phrenzy, but be remitted to prison until that incapacity be removed; the reason is, because he cannot advisedly plead to the indictment . . . . And if such person after his plea, and before his trial, becomes of *non sane memory*, he shall not be tried; or, if after his trial he becomes of *non sane memory*, he shall not receive judgment; or, if after judgment he becomes of *non sane memory*, his execution shall be spared; for were he of sound memory, he might allege somewhat in stay of judgment or execution.

1 MATTHEW HALE, HISTORIA PLACITORUM CORONAE *34-*35 (1736) (citations omitted).

13 *Drope*, 420 U.S. at 171. *See also* MODEL PENAL CODE § 4.04 (1985) ("No person who as a result of mental illness or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures.").

14 *Pate*, 383 U.S. at 385-86 (internal quotation marks omitted). This rule is codified in 18 U.S.C. § 4241(a) (1985), which provides:

> [T]he court *shall* . . . order such a hearing on its own motion [to determine the mental competency of the defendant] if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(emphasis added).

15 *See* THOMAS GRISSO, EVALUATING COMPETENCIES 69-70 (1986) (listing commentators' criticisms of the substance of psychiatric competency assessments and the procedures with which they are performed).

16 362 U.S. 402 (1960) (per curiam).

with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him."[17] This test has its origins in *Youtsey v. United States*,[18] in which the Sixth Circuit reversed a defendant's conviction because the district court never determined whether the defendant's epilepsy had rendered him "incapable of understanding the proceedings, and intelligently advising with his counsel as to his defense."[19]

Courts and commentators have identified two main policies supporting the notion that due process prohibits the trial of incompetent defendants. First, the prohibition against the trial of incompetent defendants is "fundamental to an adversary system of justice."[20] Requiring that a criminal defendant be competent to stand trial reflects the concern for the accuracy and fairness of criminal judicial proceedings.[21] A defendant who is not of a rational and sound mind may unintentionally fail to provide important information that might tend to reveal his innocence.[22] Moreover, a mentally deficient defendant may be unable to make basic decisions throughout the proceedings, such as how to plead and whether to dismiss counsel,[23] or an incompetent defendant may conduct himself in an irrational and inappropriate manner that disturbs the proceed-

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[17] *Id. Dusky* is codified generally at 18 U.S.C. § 4241(d) (1988), which provides:

> If, after a hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall [then] hospitalize the defendant for treatment in a suitable facility . . . .

[18] 97 F. 937 (6th Cir. 1899).

[19] *Id.* at 946-47. Similarly, in United States v. Chisolm, 149 F. 284 (S.D. Ala. 1906), a district court held that:

> [A] person, though not entirely sane, may be put upon trial in a criminal case if he rightly comprehends his own condition with reference to the proceedings, and has such possession and control of his mental powers, including the faculty of memory, as will enable him to testify intelligently and give his counsel all the material facts . . ., and has such poise of his faculties as will enable him to rationally and properly exercise all the rights which the law gives him in contesting a conviction.

Id. at 287. *See also* McIntosh v. Pescor, 175 F.2d 95, 98-99 (6th Cir. 1949) (issue was "whether the accused had the mental capacity to understand the proceedings against him and rationally advise with his counsel as to his defense").

See Peter R. Silten & Richard Tullis, *Mental Competency in Criminal Proceedings*, 28 HASTINGS L.J. 1053, 1058-65 (1977), for a more in-depth analysis of the evolution and application of the *Dusky* standard.

[20] Drope v. Missouri, 420 U.S. 162, 171-72 (1975) (citing Note, *Incompetency to Stand Trial*, 81 HARV. L. REV. 454, 457-59 (1967)); MODEL PENAL CODE § 4.04 commentary at 220 n.1 (1985).

[21] Note, *supra* note 20, at 457.

[22] *Id.*

[23] *Id.* at 458.

ings.[24] Also, the traditional justifications for criminal punishment—such as retribution and specific deterrence—require that a defendant understand why he is being punished.[25] Such understanding may be lost when a defendant cannot rationally comprehend the proceedings.[26]

Second, the prohibition against the trial of incompetent defendants is a derivative of the prohibition against trials *in absentia*.[27] A defendant of unsound mind, although present in body during the trial, may be absent from the trial as he is mentally incapable of presenting, comprehending, and participating in his defense.[28]

B. THE RIGHT TO WAIVE CONSTITUTIONAL RIGHTS IN CRIMINAL PROCEEDINGS

The Fifth and Sixth Amendments guarantee several rights to a defendant during a criminal trial. Included are the prohibition of compulsory self-incrimination,[29] the right to a jury trial,[30] the right to confront one's accusers,[31] and the right to assistance of counsel.[32] But even though these rights are guaranteed to all, a defendant may waive them.

For instance, the Sixth Amendment guarantees an accused in criminal prosecutions the right "to have the assistance of counsel for his defence."[33] This right to assistance of counsel is a fundamental right.[34] Therefore, when an indigent defendant cannot afford an attorney, the judicial system is obligated to provide that defendant with legal representation.[35] The assistance of counsel is

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24 *Id.*

25 *Id.* at 458-59.

26 *Id.*

27 Drope v. Missouri, 420 U.S. 162, 171 (1975) (quoting Caleb Foote, *A Comment on Pre-Trial Commitments of Criminal Defendants*, 108 U. PA. L. REV. 832, 834 (1960)); Silten & Tullis, *supra* note 19, at 1053.

28 *Drope*, 420 U.S. at 171 (quoting Foote, *supra* note 27, at 834).

29 U.S. CONST. amend. V.

30 U.S. CONST. amend. VI.

31 *Id.*

32 *Id.*

33 *Id.*

34 Gideon v. Wainwright, 372 U.S. 335, 342-43 (1963); Johnson v. Zerbst, 304 U.S. 458, 462 (1938); Grosjean v. American Press Co., 297 U.S. 233, 243-44 (1936); Powell v. Alabama, 287 U.S. 45, 68 (1932).

35 *Gideon*, 372 U.S. at 344. *See also* Argersinger v. Hamlin, 407 U.S. 25, 32-33 (1972) (an indigent's right to assistance of counsel extends to any criminal trial where an accused faces imprisonment, regardless of whether the offense is classified as felony, misdemeanor, or petty). *But see* Scott v. Illinois, 440 U.S. 367, 369, 373-74 (1979) (an indigent's right to assistance of counsel does not extend to those trials for which imprisonment is authorized, but not actually imposed, on a defendant, nor does it extend to those trials in which fines are actually imposed).

deemed necessary because the complex procedural and substantive safeguards in the law, which ensure fair trials, cannot be effective if the defendant is forced to stand trial without a defense counsel who has been educated to use them appropriately.[36]

A defendant may waive the right to counsel, however. In *Faretta v. California*,[37] the Supreme Court recognized that the fundamental right to assistance of counsel does not imply that a state may constitutionally force an unwilling defendant to accept representation that he does not want.[38] Rather, the *Faretta* Court inferred a right of self-representation from the structure of the Sixth Amendment.[39] According to the Court, "[i]t is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' "[40] The right to defend oneself, the Court noted, "is given directly to the accused; for it is he who suffers the consequences if the defense fails."[41] Since the Sixth Amendment speaks of the *assistance* of counsel, an attorney, however expert and versed in the intricacies of the law, is merely an assistant to a criminal defendant.[42] To force representation on an unwilling defendant would transform counsel from the defendant's mere assistant to his master.[43] The fact that a defendant would likely present a more effective defense with the assistance of counsel does not matter since a defendant's technical legal knowledge is irrelevant "to an assessment of his knowing exercise of the right to defend himself."[44]

Likewise, the Fifth Amendment guarantees that "[n]o person shall . . . be compelled in any criminal case to be a witness against himself."[45] The Supreme Court, in holding the privilege against compulsory self-incrimination applicable to the states through the Fourteenth Amendment, has stated that "the privilege is one of the principles of a free government."[46] However, the Fifth Amendment does not imply that a defendant may never testify against himself; it

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[36] *Gideon*, 372 U.S. at 345. *See also* 2 WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 11.1(a), at 7 (1984).

[37] 422 U.S. 806 (1975).

[38] *Id.* at 833-34.

[39] *Id.* at 819-20.

[40] *Id.* at 819 (quoting U.S. CONST. amend. VI.).

[41] *Id.* at 819-20.

[42] *Id.* at 820.

[43] *Id.*

[44] *Id.* at 836.

[45] U.S. CONST. amend. V.

[46] Malloy v. Hogan, 378 U.S. 1, 9 (1964) (citing Boyd v. United States, 116 U.S. 616, 632 (1886).

merely guarantees that a defendant cannot be forced to do so.[47] A defendant will generally testify against himself after striking a plea bargain deal with the prosecution, whereby the accused usually agrees to plead "guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge."[48] But by pleading guilty, not only does a defendant waive the privilege against compulsory self-incrimination; that defendant also simultaneously waives several other constitutional rights, including the right to trial by jury and the right to confront one's accusers.[49]

Until *Santobello v. New York*,[50] the constitutionality of plea bargaining arrangements was uncertain. The *Santobello* Court, in recognizing a defendant's right to plea bargain,[51] noted that plea bargaining is an "essential component of the administration of justice" that mutually benefits both the defendant and the state prosecution.[52] According to the Court, if every defendant were subjected to a criminal trial, "the States and Federal Government would need to multiply by many times the number of judges and court facilities."[53] For the accused defendant, plea bargaining "avoids much of the corrosive impact of enforced idleness during pre-trial confinement for those who are denied release pending trial,"[54] reduces the public exposure and scrutiny a defendant must face while undergoing trial,[55] eliminates the practical burdens—both emotional and financial—for an accused in defending himself,[56] accelerates the inevitable conviction and correctional process of a defendant facing overwhelming evidence,[57] and enhances the rehabilitative potential of the imprisonment system "by shortening the time between charge and disposition."[58]

When a mentally competent defendant wishes to waive such

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47 *See* Santobello v. New York, 404 U.S. 257 (1971), discussed *infra* notes 50-58 and accompanying text.

48 BLACK'S LAW DICTIONARY 1152 (6th ed. 1990).

49 Boykin v. Alabama, 395 U.S. 238, 243 (1969).

50 404 U.S. 257 (1971).

51 The right of a defendant to plea bargain is now codified in FED. R. CRIM. P. 11(a)(1) ("A defendant may plead not guilty, guilty, or nolo contendere."). Nevertheless, "[a] court may reject a plea in exercise of sound judicial discretion." *Santobello*, 404 U.S. at 261; FED. R. CRIM. P. 11(e)(4).

52 *Santobello*, 404 U.S. at 260.

53 *Id.*

54 *Id.* at 261.

55 Brady v. United States, 397 U.S. 742, 752 (1970).

56 *Id.*

57 *Id.*

58 *Santobello*, 404 U.S. at 261.

constitutional rights, the trial court must make a detailed inquiry into whether that waiver is valid. The Supreme Court's jurisprudence, which has concentrated primarily on the right to counsel and the prohibition against compulsory self-incrimination, has set a high standard for a valid waiver of such constitutional guarantees. The Court has articulated three requirements of a waiver of such rights that must be met before the waiver may be accepted as valid:[59] the defendant's waiver must be voluntary,[60] it must be "intelligent and knowing,"[61] and the trial court record must demonstrate that the accused waived such rights voluntarily, knowingly, and intelligently.[62] This test applies to the waiver of many rights, including those of the Fifth and Sixth Amendments. The fundamental nature of the constitutional right to counsel imposes the serious protective duty on the trial court to determine whether a defendant's discharge of counsel is valid.[63] Similarly, a plea of guilty is considered a "grave and solemn" act because the defendant admits to having committed the acts of which he is accused and agrees to a conviction without a trial.[64] Accordingly, a petitioner who is incompetent to enter an intelligent plea may either withdraw the guilty plea[65] or collaterally attack the sentence or conviction.[66]

C. THE DISPUTE OVER THE REQUISITE STANDARD FOR COMPETENCY TO WAIVE CONSTITUTIONAL RIGHTS

Although the Supreme Court has articulated standards to determine whether a defendant's waiver of constitutional rights is valid,[67] the Court had never defined the standard of mental competency by which a defendant is deemed capable to voluntarily and intelligently waive those rights until *Godinez*.[68] The tests for the va-

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59 FED. R. CRIM. P. 11(c) and (d) codify these requirements, which must be satisfied before the judge may accept a guilty plea.

60 Johnson v. Zerbst, 304 U.S. 458, 463-64 (1938) (waiver of counsel); *Brady*, 397 U.S. at 748 (guilty plea).

61 Faretta v. California, 422 U.S. 806, 835 (1975) (waiver of counsel); *Brady*, 397 U.S. at 748 (guilty plea).

62 Carnley v. Cochran, 369 U.S. 506, 516 (1962) (waiver of counsel); Boykin v. Alabama, 395 U.S. 238, 242 (1969) (guilty plea).

63 Westbrook v. Arizona, 384 U.S. 150 (1966) (per curiam) (citing *Johnson*, 304 U.S. at 465).

64 *Brady*, 397 U.S. at 748.

65 *See* FED. R. CRIM. P. 32(d) ("[T]o correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.").

66 28 U.S.C. § 2255 (1988); United States v. Masthers, 539 F.2d 721, 726 (D.C. Cir. 1976).

67 *See supra* notes 59-66 and accompanying text.

68 *Godinez v. Moran*, 113 S. Ct. 2680, 2685 (1993).

lidity of a waiver of constitutional rights assume that the defendant is competent to make a rational choice among various courses of action.[69] Before *Godinez,* Supreme Court jurisprudence was less than clear as to the degree of mental competency required before a defendant may make the decision to waive such constitutional rights.[70]

In *Massey v. Moore,*[71] the Court first acknowledged that the standard of competency required to stand trial without a lawyer *might* be higher than the standard required to stand trial with an advocate.[72] In *Massey,* the defendant repeatedly attempted to obtain habeas corpus relief in both federal and state courts, claiming that he had been unconstitutionally tried and convicted without benefit of counsel while insane.[73] The defendant was unsuccessful in each application because the court records falsely noted that he had been represented by an attorney.[74] When it learned of the error, the district court ruled, without stating any basis or reasoning for its decision, that the defendant's claim was without merit.[75]

On appeal, the Supreme Court held that the district court opinion was legally ambiguous since it did not clarify the basis of its finding and, hence, that the question of Massey's "ability to represent himself without counsel remain[ed] undetermined."[76] According to the Court in *Massey,* the district court ruling could be interpreted in two ways. First, it could mean that the particular evidence that supported the finding that Massey was competent to stand trial with counsel also sufficiently supported the independent conclusion that Massey was competent to stand trial without counsel.[77] Alternatively, the ruling could have meant that the issues of competency to stand trial with or without counsel required the same inquiry, with the evidence supporting a conclusion of competence to stand trial assisted by an attorney necessarily supporting a conclusion of competency to stand trial without representation.[78] Acknowledging that

69 *See* George E. Dix, *Waiver in Criminal Procedure: A Brief for More Careful Analysis,* 55 TEX. L. REV. 193, 260 (1977).

70 Although a defendant could presumably waive any procedural protection guaranteed by the Constitution, most cases have involved waivers of the Fifth Amendment right against compulsory self-incrimination through the entry of a guilty plea and the Sixth Amendment right to assistance of counsel.

71 348 U.S. 105 (1954).

72 *Id.* at 108.

73 *Id.* at 106.

74 *Id.* at 107.

75 *Id.* at 107-08.

76 *Id.* at 108.

77 *Id.*

78 *Id.*

the issue of whether the requisite competency standard to stand trial without an attorney was higher than the standard to stand trial with an attorney was yet unsettled, the *Massey* Court noted that "[o]ne *might* not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without benefit of counsel."[79]

In *Rees v. Peyton*,[80] the Court addressed the issue of a defendant's competency to waive the right to appellate review. In *Rees*, a capital defendant wanted to withdraw his petition for certiorari to the Supreme Court and forego further legal proceedings.[81] Rees' counsel advised the Court that he could not honor Rees' instructions without a psychiatric investigation since evidence indicated that Rees might not be mentally capable of making such a decision.[82] A psychiatrist selected by Rees' counsel examined Rees and filed a detailed report concluding that Rees was mentally incompetent.[83] State-selected psychiatrists, however, subsequently doubted that finding of insanity.[84] As the district court had not made a factual determination as to Rees' mental condition in light of his desire to cease appealing his conviction,[85] the *Rees* Court could not determine how to dispose of his petition.[86] Accordingly, the Court directed the district court to make the initial judicial determination into whether the defendant possessed the "capacity to appreciate his position and make a *rational choice* with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises."[87]

The federal circuit courts that confronted this issue disagreed on whether the competency standard to waive counsel or plead guilty[88] is higher than, or equivalent to, the *Dusky* standard for standing trial. This conflict occurred due to different readings of the Supreme Court's holding in *Westbrook v. Arizona*.[89] In *Westbrook*, the defendant was convicted of first degree murder after discharging

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79 *Id.* (emphasis added).
80 384 U.S. 312 (1966) (per curiam).
81 *Id.* at 313.
82 *Id.*
83 *Id.*
84 *Id.*
85 *Id.* at 313-14.
86 *Id.*
87 *Id.* at 314 (emphasis added).
88 As noted, a defendant could presumably waive any procedural protection guaranteed by the Constitution, but most cases have specifically concerned either the waiver of the right to counsel or the prohibition against compulsory self-incrimination. *See supra* note 70.
89 384 U.S. 150 (1966) (per curiam).

his counsel and conducting his own defense.[90] The trial court conducted a hearing regarding his competence to stand trial, but not his competence to waive his right to counsel and to conduct his own defense.[91] Noting that the fundamental nature of the right to counsel places a protective duty on the court to determine whether the accused waived this right intelligently and competently,[92] the Court, with no discussion of the actual trial record, remanded the case for further proceedings to determine whether these protecting duties, enunciated in *Johnson v. Zerbst*[93] and *Carnley v. Cochran*,[94] had been fulfilled.[95]

The Ninth Circuit and District of Columbia Circuit employed a heightened standard for evaluating a defendant's competency to enter a guilty plea. In *Sieling v. Eyman*,[96] the Ninth Circuit inferred from *Westbrook* that a determination of competency to stand trial is inadequate to evaluate competency to plead guilty.[97] In *Sieling*, a convict, who had pleaded guilty at trial, petitioned for a writ of habeas corpus on the theory that his mental incompetence invalidated his guilty pleas.[98] Although originally found competent to stand trial, the defendant argued that because his competency to plead guilty had not been raised, the trial court never ruled on the issue.[99] The *Sieling* court agreed with this argument, citing the fact that the *Westbrook* Court had remanded the case for "further inquiry into the issue of [the defendant's] competence to waive his constitutional right to the assistance of counsel" after the state court had concluded that the defendant was mentally competent to stand trial.[100] The *Sieling* court reasoned from this that a determination of competency to stand trial is inadequate to imply competency to plead guilty because it does not measure a defendant's mental capacity by a high enough standard.[101] The Ninth Circuit concluded that although *Westbrook* did not enunciate a specific standard, it was

90 State v. Westbrook, 406 P.2d 388, 390 (Ariz. 1965).

91 *Westbrook*, 384 U.S. at 150.

92 *Id.* (citing Johnson v. Zerbst, 304 U.S. 458, 465 (1938); Carnley v. Cochran, 369 U.S. 506 (1962)).

93 304 U.S. 458 (1938). *See supra* notes 59-62 and accompanying text.

94 369 U.S. 506 (1962). *See supra* notes 59-62 and accompanying text.

95 *Westbrook*, 384 U.S. at 151.

96 478 F.2d 211 (9th Cir. 1973). Because the court reached the same conclusion as *Moran v. Godinez*, 972 F.2d 263 (9th Cir. 1992), which was reversed by *Godinez v. Moran*, 113 S. Ct. 2680 (1993), the *Sieling* decision has been reversed by implication.

97 *Id.* at 214-15.

98 *Id.* at 213.

99 *Id.*

100 *Id.* at 214 (citing Westbrook v. Arizona, 384 U.S. 150 (1966) (per curiam) (internal quotation marks omitted)).

101 *Id.*

reasonable that the standard to waive a constitutional right was that "degree [of competence] which enables [the defendant] to make decisions of very serious import."[102] The court then held that a defendant must have the mental capacity to "make a reasoned choice among the alternatives presented to him and to understand the nature of the consequences of his plea."[103] The court believed this standard to be appropriate because it "requires a court to assess a defendant's competency with specific reference to the gravity of the decisions with which the defendant is faced."[104] The District of Columbia later adopted the *Sieling* standard, with little actual discussion or explanation, in *United States v. Masthers*.[105]

Every other circuit, by contrast, has applied the *Dusky* standard to evaluate a defendant's competency to enter a guilty plea. Several of these circuits rejected the Ninth Circuit's rule requiring a heightened standard of mental competency for the entry of a guilty plea, although each opinion provides little explanation beyond the mere assertion that there is no logical reason for a conclusion that the standards should be different.[106] The remaining circuits, in cases in which the applicable legal standard was not in dispute, simply applied the *Dusky* standard in evaluating a defendant's competency to enter a guilty plea.[107]

Several circuits have struggled to interpret the *Westbrook* holding as it pertains to the competency standard required for a defend-

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[102] *Id.* at 215.

[103] *Id.* That standard was first suggested in Scholler v. Dunbar, 423 F.2d 1183, 1194 (9th Cir.) (Hufstedler, J., dissenting), *cert. denied*, 400 U.S. 834 (1970).

[104] *Sieling*, 478 F.2d at 215.

[105] 539 F.2d 721, 726 (D.C. Cir. 1976). *See also* United States v. David, 511 F.2d 355, 362 n.19 (D.C. Cir. 1975) ("While [defendant's] level of awareness and comprehension might have been high enough to render him competent to stand trial, it may not have been high enough to allow him to validly waive his constitutional right to a trial by jury . . . .").

[106] *See* Allard v. Helgemoe, 572 F.2d 1, 3-4 (1st Cir.) (applying *Dusky* despite the defendant's argument for a higher standard), *cert. denied*, 439 U.S. 858 (1978); United States v. Hewitt, 528 F.2d 339, 342 (3d Cir. 1975) (rejecting *Sieling* in favor of *Dusky* standard); Shaw v. Martin, 733 F.2d 304, 314 (4th Cir.) (adopting a standard "parallel" to that of *Dusky* as the court could see "no logical reason that the standards should be different"), *cert. denied*, 469 U.S. 873 (1984); Malinauskas v. United States, 505 F.2d 649, 654 (5th Cir. 1974) ("The test[s] of mental competency at the time of trial or the entering of a plea . . . [are] the same."); United States v. Harlan, 480 F.2d 515, 517 (6th Cir.) (rejecting the argument that the standard to plead guilty should be more stringent), *cert. denied*, 414 U.S. 1006 (1973); United States *ex rel.* Heral v. Franzen, 667 F.2d 633, 638 (7th Cir. 1981) (agreeing with several other circuits that the standards are equivalent).

[107] *See* United States v. Valentino, 283 F.2d 634, 635 (2d Cir. 1960) (applying the pre-*Dusky* formulation for competency articulated in 18 U.S.C. § 4244); Stanley v. Lockhart, 941 F.2d 707, 710 (8th Cir. 1991); Wolf v. United States, 430 F.2d 443, 444 (10th Cir. 1970); United States v. Simmons, 961 F.2d 183, 187 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 1591 (1993).

ant to be capable of discharging counsel. The Second, Sixth, and Eighth Circuits, each applied the *Dusky* standard in the context of guilty pleas, but indicated that the competency standard for waiving the right to counsel is "vaguely higher" than, or "not coextensive" with, the competency standard for standing trial.[108] The First Circuit, which also applied *Dusky* in the context of guilty pleas, noted that the two standards "may not always be coterminous."[109] Only the Ninth Circuit has applied the *Sieling* "reasoned choice" standard to waivers of counsel.[110] The Seventh Circuit alone has held that the competency standards for standing trial and waiving counsel are identical,[111] while the Fourth Circuit noted that the two standards are "closely linked."[112] The Supreme Court noted this division in the circuits and granted certiorari to resolve the issue of whether the competency standard to discharge counsel or plead guilty is higher than the standard to stand trial.[113]

III. Facts and Procedural History

On August 2, 1984, Richard Allen Moran entered a saloon and killed the bartender and a patron by shooting each four times.[114] Moran then removed the cash register[115] and set fires in several locations within the saloon.[116] Nine days later, he shot and killed his ex-wife at her apartment, hitting her with five of the seven shots he fired.[117] Moran then shot himself in the abdomen and slit his

108 United States *ex rel.* Konigsberg v. Vincent, 526 F.2d 131, 133 (2d Cir. 1975) ("[*Westbrook*] does indicate that the standard of competence for making the decision to represent oneself is *vaguely higher* than the standard for competence to stand trial.") (emphasis added), *cert. denied*, 426 U.S. 937 (1976); United States v. McDowell, 814 F.2d 245, 250 (6th Cir.) ("We recognize that the degree of competency required to waive counsel is '*vaguely higher* than the competency required to stand trial.' ") (emphasis added), *cert. denied*, 484 U.S. 980 (1987); Blackmon v. Armontrout, 875 F.2d 164, 166 (8th Cir.) ("The standard for determining whether a person is capable of making a knowing and intelligent waiver of the right to counsel is *not coextensive* with the test for determining competency to proceed to trial.") (emphasis added), *cert. denied*, 493 U.S. 939 (1989).

109 United States v. Campbell, 874 F.2d 838, 846 (1st Cir. 1989).

110 Moran v. Godinez, 972 F.2d 263, 266 (9th Cir. 1992), *rev'd*, 113 S. Ct. 2680 (1993).

111 United States v. Clark, 943 F.2d 775, 782 (7th Cir. 1991) ("[N]o additional competency determination need be made [beyond the determination of competency to stand trial.]"), *cert. denied*, 113 S. Ct. 3045 (1993).

112 United States v. McGinnis, 384 F.2d 875, 877 (4th Cir. 1967) (per curiam), *cert. denied*, 390 U.S. 990 (1968).

113 *See* Godinez v. Moran, 113 S. Ct. 2680, 2684-85 (1993).

114 *Id.* at 2682.

115 *Id.*

116 Moran v. State, 734 P.2d 712, 713 (Nev. 1987) (per curiam).

117 *Godinez*, 113 S. Ct. at 2682.

wrists.[118] On August 13, 1984, while hospitalized for his suicide attempt, he confessed to the murders.[119]

Later, after Moran pleaded not guilty to the three charges of murder in the first degree, the trial court ordered that two psychiatrists examine his fitness to stand trial.[120] Although these psychiatrists determined that Moran was "very depressed," felt "considerable remorse and guilt" for his actions, and "may be inclined to exert less effort towards his own defense," they concluded that he was fit to stand trial since he was "knowledgeable of the charges being made against him and [could] assist his attorney, in his own defense, if he so desire[d]."[121] The State then announced that it would seek the death penalty against Moran.[122]

Two and one-half months later, on November 28, 1984, Moran informed the court that he wished to plead guilty and discharge his attorney so as "to prevent the presentation of any mitigating evidence at his sentencing."[123] Based solely upon the original psychiatric reports submitted two and one-half months earlier, which had examined Moran's competency to stand trial, the trial court concluded that Moran was competent to plead guilty and discharge his attorney.[124] Specifically, the court found that Moran knew the nature of the acts he had committed and could determine right from wrong, that he understood the charges against him and could assist in his defense, that he recognized the consequences of his guilty pleas, and that he could intelligently and knowingly waive his right to be represented by counsel.[125] The trial court then posed a series of routine questions concerning Moran's understanding of his legal rights, advised him of his right to legal counsel, "warned him of the 'dangers and disadvantages' of self-representation, inquired into his understanding of the proceedings . . ., and asked why he had chosen to represent himself."[126] To this inquiry, Moran gave "largely monosyllabic answers."[127] The trial court then accepted Moran's waiver

118 *Id.*
119 *Id.*
120 *Id.*
121 *Id.* at 2692 (Blackmun, J., dissenting). *See also id.* at 2683 n.1.
122 *Id.* at 2682-83.
123 *Id.* at 2683.
124 *Id.*
125 *Id.*
126 *Id.*
127 *Id.* at 2693 (Blackmun, J., dissenting). The dissent cited the following exchange to highlight the "mechanical" nature of Moran's answers:

> When the trial judge asked him whether he killed his ex-wife "deliberately, with premeditation and malice aforethought," Moran unexpectedly responded: "No, I didn't do it—I mean, I wasn't looking to kill her, but she ended up dead." Instead

of counsel as valid, explicitly finding that he "was 'knowingly and intelligently' waiving his right to counsel."[128] After determining that Moran "was not pleading guilty in response to threats . . ., that he understood the nature of the charges . . . and consequences of pleading guilty, that he was aware of the [constitutional] rights he was giving up, and that there was a factual basis for the pleas," the court also accepted Moran's guilty pleas as "freely and voluntarily" given.[129]

The trial court also inquired as to whether Moran was "presently under the influence of any drug or alcohol," to which Moran responded, "[j]ust what they give me in, you know, medications."[130] At the time, Moran was being administered simultaneously four types of medications—phenobarbital, dilantin, inderal, and vistaril.[131] Later testimony revealed that the drugs had a "numbing effect" on Moran; he stated that he did not care about the proceedings or anything else that was going on.[132] The trial court, however, made no further inquiry or investigation into either the dosages or the type of medication Moran was taking.[133]

After Moran entered his guilty pleas, he was sentenced to death for each of the murders by a three judge panel on January 21, 1985.[134] The Supreme Court of Nevada affirmed the death sentences for the two saloon murders, but reversed the death sen-

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> of probing further, the trial judge simply repeated the question, inquiring again whether Moran had acted deliberately. Once again, Moran replied: "I don't know. I mean, I don't know what you mean by deliberately. I mean, I pulled the trigger on purpose, but I didn't plan on doing it; you know what I mean?" Ignoring the ambiguity of Moran's responses, the trial judge reframed the question to elicit an affirmative answer, stating: "Well, I've previously explained to you what is meant by deliberation and premeditation. Deliberate means that you arrived at or determined as a result of careful thought and weighing the consideration for and against the proposed action. Did you do that?" This time, Moran responded: "Yes."

Id. (Blackmun, J., dissenting) (internal citations omitted).

128 *Id.* at 2683.

129 *Id.*

130 *Id.* at 2692 (Blackmun, J., dissenting).

131 *Id.* (Blackmun, J., dissenting). The dissent noted that Moran's medical records "show that Moran was administered dilantin, an anti-epileptic medication that may cause confusion; inderal, a beta-blocker anti-arrhythmic that may cause light-headedness, mental depression, hallucinations, disorientation, and short-term memory loss; and vistaril, a depressant that may cause drowsiness, tremors, and convulsions." *Id.* at 2692 n.1 (Blackmun, J., dissenting).

Phenobarbital is a central nervous system depressant that is used primarily as a sedative-hypnotic. PHYSICIANS' DESK REFERENCE 1331 (47th ed. 1993). The drug can accentuate emotional disturbances and can cause drowsiness and lethargy. *Id.* at 1332-33.

132 *Godinez*, 113 S. Ct. at 2692 (Blackmun, J., dissenting).

133 *Id.* (Blackmun, J., dissenting).

134 *Id.* at 2683. NEV. REV. STAT. § 200.030(4)(a) (1992) provides, in pertinent part:

> Every person convicted of murder of the first degree shall be punished: (a) By death, only if one or more aggravating circumstances are found and any mitigating

tence for the murder of Moran's ex-wife.[135] For that murder, the Nevada court instead imposed a life sentence and denied the possibility of parole.[136]

Moran then petitioned the state court for post-conviction relief.[137] The trial court reviewed the evidence and rejected Moran's argument that his mental incompetence precluded his self-representation.[138] The court ruled that "the record clearly show[ed] that he was examined by two psychiatrists both of whom declared [him] competent."[139] The Supreme Court of Nevada dismissed Moran's subsequent appeal[140] and the United States Supreme Court denied certiorari.[141]

Moran subsequently filed for habeas corpus review in the United States District Court for the District of Nevada. The district court denied the petition.[142] The Ninth Circuit reversed, stating that the "record in this case should have led the trial court to entertai[n] a good faith doubt about [respondent's] competency to make a voluntary, knowing, and intelligent waiver of constitutional rights."[143] Therefore, the Ninth Circuit concluded that "[d]ue process . . . required the court to hold [an additional] hearing to evaluate . . . Moran's competency to waive [his] constitutional rights

circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances.

[135] *Godinez*, 113 S. Ct. at 2683. Concerning the murder of his ex-wife, the court held that Moran did not satisfy any of the "aggravating circumstances" and consequently was ineligible for the death penalty for that particular murder under NEV. REV. STAT. § 200.030(4)(a) (1992). Moran v. State, 734 P.2d 712, 714 (Nev. 1987). NEV. REV. STAT. § 200.033 (1993) provides, in pertinent part:

> The only circumstances by which murder of the first degree may be aggravated are:
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> . . .
>
> 3. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.
>
> . . .
>
> 8. The murder involved torture, depravity of mind or the mutilation of the victim.
>
> 9. The murder was committed upon one or more persons at random and without apparent motive.

[136] *Moran*, 734 P.2d at 714. NEV. REV. STAT. § 177.055(3)(c) (1992) provides, in pertinent part, that "[t]he supreme court, when reviewing a death sentence, may: . . . (c) Set aside the sentence of death and impose the sentence of imprisonment for life without possibility of parole."

[137] *Godinez*, 113 S. Ct. at 2683.

[138] *Id.*

[139] *Id.* (second alteration in original).

[140] Moran v. Warden, 810 P.2d 335 (Nev. 1989).

[141] Moran v. Whitley, 493 U.S. 874 (1989).

[142] *Godinez*, 113 S. Ct. at 2683.

[143] *Id.* at 2683-84 (quoting Moran v. Godinez, 972 F.2d 263, 265 (9th Cir. 1992) (internal quotation marks omitted), *rev'd*, 113 S. Ct. 2680 (1993)).

before it accepted his decision to discharge counsel and [plead guilty]."[144]

The State additionally argued that any possible error by the trial court at the plea hearing was corrected by the post-conviction hearing[145] and that the state court's competency hearing was entitled to the deference given state court findings of fact on habeas review.[146] The Ninth Circuit rejected these arguments, stating that "the state court's postconviction ruling was premised on the wrong legal standard of competency."[147] "Competency to waive constitutional rights," in the Ninth Circuit's view, "require[d] a higher level of mental functioning than that required to stand trial."[148] The court stated that competency to stand trial requires only that a defendant have "a rational and factual understanding of the proceedings and . . . [be] capable of assisting his counsel," while the competency to waive counsel or plead guilty requires that a defendant have "the capacity for 'reasoned choice' among the alternatives available to him."[149] Furthermore, the court held that "the record did not support a finding that [Moran] was mentally capable of the reasoned choice required for a valid waiver of constitutional rights."[150] Accordingly, the Ninth Circuit reversed the district court, granting it sixty days within which to issue the habeas writ unless the state court, in that time, allowed Moran "to withdraw his guilty pleas, enter new pleas, and proceed to trial with the assistance of counsel."[151]

The state petitioned for a writ of certiorari to the Supreme Court of the United States, which granted the writ to resolve the conflict over whether due process requires a higher degree of mental competence for pleading guilty or waiving the right to an attorney than that degree of mental competence necessary to stand

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144 *Moran*, 972 F.2d at 265.

145 *Godinez*, 113 S. Ct. at 2684 (citing *Moran*, 972 F.2d at 265).

146 *Id.* (referring to 28 U.S.C. § 2254(d) (1988)). 28 U.S.C. § 2254(d) provides, in pertinent part:

> *[I]n any proceeding instituted in a Federal court by an application for a writ of habeas corpus* by a person in custody pursuant to the judgment of a State court, *a determination* after a hearing on the merits of a factual issue, *made by a State court* of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, *shall be presumed to be correct* . . . .

(emphasis added).

147 *Godinez*, 113 S. Ct. at 2684 (quoting *Moran*, 972 F.2d at 266).

148 *Id.* (quoting *Moran*, 972 F.2d at 266).

149 *Id.* (quoting *Moran*, 972 F.2d at 266).

150 *Id.* (quoting *Moran*, 972 F.2d at 267).

151 *Id.* (quoting *Moran*, 972 F.2d at 268).

trial.[152]

IV. The Supreme Court Opinions

A. THE MAJORITY OPINION

Justice Thomas, writing for the majority,[153] began by noting that the distinction between the "rational understanding" standard of *Dusky* and the Ninth Circuit's "reasoned choice" standard was "not readily apparent."[154] Even assuming, *arguendo*, that a distinction exists, Justice Thomas held that due process does not require either a different or a higher competency standard to plead guilty or waive counsel than that to stand trial.[155]

1. *The Requisite Competency Standard to Plead Guilty*

Justice Thomas approached the competency standards to plead guilty and waive counsel separately. Examining the standard to plead guilty, the Court noted that "[a] defendant who stands trial is likely to be presented with choices that entail relinquishment of the same rights that are relinquished by a defendant who pleads guilty."[156] These rights include a waiver of the privilege against self-incrimination should the defendant elect to take the witness stand, a waiver of the right to confront one's accusers should the defendant decline to cross-examine the prosecution's witnesses, and a waiver of the right to trial by jury.[157] Justice Thomas stated that "while the decision to plead guilty is undeniably a profound one, it is no more complicated than the sum total of decisions that a defendant may be called upon to make during the course of a trial."[158] Therefore, the Court saw no reason to elevate the standard of competency for pleading guilty.

2. *The Requisite Competency Standard to Discharge Counsel*

Addressing the standard to discharge counsel, Justice Thomas noted that "there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning

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[152] *Id.* at 2685.

[153] Justice Thomas was joined by Chief Justice Rehnquist and Justices White, O'Connor, and Souter. Justices Kennedy and Scalia joined as to parts I, II-B, and III of the Court's opinion and concurred in the judgment.

[154] *Godinez*, 113 S. Ct. at 2686.

[155] *Id.*

[156] *Id.*

[157] *Id.* (citing Boykin v. Alabama, 395 U.S. 238, 243 (1969)).

[158] *Id.*

than the decision to waive other constitutional rights."[159] Moran argued that a defendant who represents himself must have greater powers of reasoning and intelligence than would be necessary for one who is tried with the aid of counsel.[160] Justice Thomas countered by simply noting that the competence required is the competence to waive the right to counsel, not the technical capacity to represent oneself.[161] According to Justice Thomas, a defendant's "technical legal knowledge" is "not relevant" to whether he is competent to *choose* self-representation.[162] Therefore, although a defendant would be better able to present a defense with counsel assisting him than equipped solely with his own untrained legal skills, the Court did not believe this was adequate reason to elevate the standard of competency to waive counsel.[163]

3. *The Additional Requirement of a "Knowing and Voluntary" Waiver*

Justice Thomas then added that, once a trial court determines that a defendant is competent to waive counsel and plead guilty, the court must additionally inquire into whether the defendant's waiver of these rights was indeed "knowing and voluntary."[164] "In this sense," according to Justice Thomas, "there *is* a heightened standard for pleading guilty and for waiving the right to counsel, but it is not a heightened standard of *competence*."[165] Justice Thomas explained that *Westbrook* follows this two-part inquiry.[166] He noted that when *Westbrook* "distinguished between 'competence to stand trial' and 'competence to waive [the] constitutional right to assistance of counsel,' we were using 'competence to waive' as a shorthand for the 'intelligent and competent waiver' requirement of *Johnson v. Zerbst*."[167] Therefore, Justice Thomas made it clear that a defendant must be competent to waive counsel or plead guilty and the competent defendant's waiver of these constitutional rights must be intelligent and voluntary before the court can accept it as valid.[168]

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159 *Id.* These "other constitutional rights" are discussed *supra* note 157 and accompanying text.

160 *Godinez*, 113 S. Ct. at 2686.

161 *Id.* at 2687.

162 *Id.* (citing Faretta v. California, 422 U.S. 806, 836 (1975)).

163 *Id.*

164 *Id.* (citing Parke v. Raley, 113 S. Ct. 517, 523 (1992) (guilty plea); *Faretta*, 422 U.S. at 835 (waiver of counsel)).

165 *Id.* (internal quotation marks omitted).

166 *Id.* at 2688.

167 *Id.* (internal citations omitted) (alterations in original).

168 *Id.*

In conclusion, Justice Thomas stated that, although "psychiatrists . . . may find it useful to classify the various . . . degrees of [mental] competence, and while states are free to adopt competency standards that are more elaborate than the *Dusky* formulation, the Due Process Clause does not impose these additional requirements."[169]

B. THE CONCURRING OPINION

Justice Kennedy[170] concurred in part and concurred in the judgment. Justice Kennedy observed that the Court, by comparing the decisions that must be made by a defendant who stands trial with those made by a defendant who pleads guilty and waives counsel, "seems to suggest that there may have been a heightened standard of competency required by the Due Process Clause if the decisions were not equivalent."[171] Even if the decisions were not equivalent, Justice Kennedy would still conclude that due process does not require a heightened standard of competency.

Justice Kennedy criticized the Ninth Circuit for reading the *Dusky* articulation of " 'competency to stand trial' in too narrow a fashion."[172] "Although the *Dusky* standard refer[red] to the 'ability to consult with [a] lawyer,' " Justice Kennedy noted that the critical aspect of the *Dusky* inquiry is whether the defendant possesses "a reasonable degree of rational understanding."[173] According to Justice Kennedy, "the focus of the *Dusky* formulation is on a particular level of mental functioning, which the ability to consult with counsel helps identify."[174] Whether a defendant actually consults with an attorney is not necessary "for the standard to serve its purpose."[175]

Justice Kennedy then examined eighteenth and nineteenth century American and English common law. Justice Kennedy found no precedent for the rule that due process mandates distinct standards of competency for different decisions during, or at different stages throughout, criminal proceedings.[176] Justice Kennedy argued that since Nevada's use of a single standard did not " 'offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' " he would not overturn its

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169 *Id.*

170 Justice Kennedy was joined by Justice Scalia. These Justices concurred in the judgment and joined Parts I, II-B, and III of the Court's opinion.

171 *Godinez*, 113 S. Ct. at 2688 (Kennedy, J., concurring).

172 *Id.* at 2689 (Kennedy, J., concurring).

173 *Id.* (Kennedy, J., concurring).

174 *Id.* (Kennedy, J., concurring).

175 *Id.* (Kennedy, J., concurring).

176 *Id.* at 2689-90 (Kennedy, J., concurring).

use.[177]

Each case surveyed by Justice Kennedy evaluated the competency of defendants, who claimed to be insane, to proceed through the various stages of a trial. According to Justice Kennedy, these cases either "referred to insanity in a manner that suggested there was a single standard by which competency was to be assessed throughout legal proceedings"[178] or "describe[d] the standard by which competency is to be measured in a way that supports the idea that a single standard, parallel to that articulated in *Dusky*, is applied no matter what point during legal proceedings a competency question should arise."[179] The concurrence thus determined that the common law did not "apply different competency standards to different stages of criminal proceedings or to the variety of decisions that a defendant must make."[180]

Justice Kennedy then illustrated the difficulties that the application of different competency standards might cause during criminal prosecutions. Initially, a trial court would have difficulty determining exactly which standard to apply at a given point in the proceedings.[181] Once the appropriate standard is selected, a trial court would have trouble applying the subtle nuances that distinguish one standard from another.[182]

Lastly, Justice Kennedy noted that "trial courts have the obligation of conducting a hearing whenever there is sufficient doubt concerning a defendant's competence."[183] However, the use of a single standard throughout the course of a trial to evaluate that competence does not offend any fundamental principles of justice.[184]

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177 *Id.* at 2689 (Kennedy, J., concurring) (quoting Patterson v. New York, 432 U.S. 197, 202 (1977).

178 *Id.* at 2690 (Kennedy, J., concurring) (citing State v. Reed, 7 So. 132 (La. 1889); Underwood v. People, 32 Mich. 1 (1875); Crocker v. State, 19 N.W. 435 (Wis. 1884); Regina v. Southey, 176 Eng. Rep. 825 (N.P. 1865)).

179 *Godinez*, 113 S. Ct. at 2690 (Kennedy, J., concurring) (citing Moss v. Hunter, 167 F.2d 683 (10th Cir.), *cert. denied*, 334 U.S. 860 (1948); Hunt v. State, 27 So. 2d 186 (Ala. 1946); Commonwealth v. Woelfel 88 S.W. 1061 (Ky. 1905); State v. Seminary, 115 So. 370 (La. 1927); Freeman v. People, 4 Denio 2 (N.Y. 1847); State *ex rel.* Townsend v. Bushong, 65 N.E.2d 407 (Ohio 1946) (per curiam); Jordan v. State, 135 S.W. 327 (Tenn. 1911)).

180 *Godinez*, 113 S. Ct. at 2690 (Kennedy, J., concurring).

181 *Id.* at 2691 (Kennedy, J., concurring).

182 *Id.* (Kennedy, J., concurring).

183 *Id.* (Kennedy, J., concurring) (citing Drope v. Missouri, 420 U.S. 162, 180-81 (1975)).

184 *Id.* (Kennedy, J., concurring).

C. THE DISSENTING OPINION

Justice Blackmun[185] opened by criticizing the practical results of the majority's opinion. He pointed out that "the majority upholds the death sentence for a person whose decision to discharge counsel, plead guilty, and present no defense well may have been the product of medication or mental illness."[186] The dissent called this result "contrary to both common sense and longstanding case law."[187]

Justice Blackmun argued that the "standard for competence to stand trial is specifically designed to measure a defendant's ability to consult with counsel and to assist in preparing his defense."[188] According to the dissent, "[t]he reliability or . . . relevance of such a finding vanishes when its basic premise—that counsel will be present—ceases to exist."[189] Justice Blackmun disagreed with the majority's premise that a "defendant who is found competent to stand trial with the assistance of counsel is, *ipso facto*, competent to discharge counsel and represent himself."[190] In Justice Blackmun's view, competency for one purpose does not imply competency for another.[191] Justice Blackmun opined that competency evaluations should be "specifically tailored to the context and purpose of a proceeding."[192]

Justice Blackmun relied on the earlier precedents of *Massey* and *Westbrook* to support his position. In *Massey*, the Court stated that "[o]ne might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without the benefit of counsel."[193] Similarly, in *Westbrook*, the Court held that "[a]lthough petitioner received a hearing on the issue of his competence to stand trial, there appears to have been no . . . inquiry into the issue of his competence to waive his constitutional right to the assistance of counsel and to proceed, as he did, to conduct his own defense."[194] Justice Blackmun cited these cases as evidence that the

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185 Justice Blackmun was joined by Justice Stevens.

186 *Godinez*, 113 S. Ct. at 2692 (Blackmun, J., dissenting).

187 *Id.* (Blackmun, J., dissenting).

188 *Id.* at 2693 (Blackmun, J., dissenting) (internal quotation marks omitted).

189 *Id.* at 2694 (Blackmun, J., dissenting).

190 *Id.* (Blackmun, J., dissenting).

191 *Id.* (Blackmun, J., dissenting). Justice Blackmun illustrated this point with the analogy that "a person who is competent to play basketball is not thereby competent to play the violin." *Id.* (Blackmun, J., dissenting)

192 *Id.* (Blackmun, J., dissenting).

193 *Id.* (Blackmun, J., dissenting) (quoting Massey v. Moore, 348 U.S. 105, 108 (1954)).

194 *Id.* (Blackmun, J., dissenting) (quoting Westbrook v. Arizona, 384 U.S. 150 (1966) (per curiam)).

competency standard to waive counsel may be higher than the standard to stand trial.

Justice Blackmun then analogized the present case to *Rees*, which, in his opinion, hints at the "contours" of the competency standard for self-representation.[195] Justice Blackmun reasoned that "[c]ertainly the competency required for a capital defendant to proceed *without the advice of counsel* at trial or in plea negotiations should be no less than the competency required for a capital defendant to proceed *against the advice of counsel* to withdraw a petition for certiorari."[196] He then noted that the "rational choice" standard in *Rees* approximates the Ninth Circuit's "reasoned choice" standard in the present case.[197]

Justice Blackmun criticized the majority for overruling *Westbrook* and *Massey*, *sub silentio*, by extrapolating from the constitutional right of self-representation the proposition that "a criminal defendant's ability to represent himself has no bearing upon his competence to *choose* self-representation."[198] Although a defendant need not have the experience of an attorney, the *Faretta* right to self-representation is available only to those who can choose it "competently and intelligently."[199] According to Justice Blackmun, "[t]he majority's attempt to extricate the competence to waive the right to counsel from the competence to represent oneself is unavailing, because the former decision necessarily entails the latter."[200]

Justice Blackmun then demonstrated that Moran's waiver of counsel and his guilty plea were neither competent nor intelligent. The dissent noted that the psychiatrist's report showed Moran suffered from "deep depression" and that Moran's own testimony showed he was simultaneously taking four prescription medications.[201] Based on this evidence, Justice Blackmun believed "the trial judge should have conducted another competency examination."[202]

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195 *Id.* (Blackmun, J., dissenting).

196 *Id.* at 2695 (Blackmun, J., dissenting).

197 *Id.* (Blackmun, J., dissenting).

198 *Id.* (Blackmun, J., dissenting).

199 *Id.* (Blackmun, J., dissenting) (quoting *Faretta v. California*, 422 U.S. 806, 835 (1975)).

200 *Id.* (Blackmun, J., dissenting). The dissent illustrated this point with the analogy that "a defendant who is utterly incapable of conducting his own defense cannot be considered 'competent' to make such a decision, any more than a person who chooses to leap out of a window in the belief that he can fly can be considered 'competent' to make such a choice." *Id.* at 2695-96 (Blackmun, J., dissenting).

201 *Id.* at 2696 (Blackmun, J., dissenting).

202 *Id.* (Blackmun, J., dissenting).

V. Analysis

The *Godinez* Court settled an important constitutional criminal procedural issue that had confused, confounded, and divided the federal courts since 1966, the year the Supreme Court issued the two-paragraph *Westbrook v. Arizona*[203] decision.[204] The *Godinez* Court's holding—that due process does not require a heightened competency standard to waive constitutional rights above the standard to stand trial—provides a clearer interpretation of *Westbrook* than the Ninth Circuit's decision in *Sieling v. Eyman*[205] and is consistent with the elusive and oft-misinterpreted *Massey v. Moore*[206] and *Rees v. Peyton*[207] decisions. *Godinez* also comports both with the policy considerations supporting a defendant's right to plea bargain and the right to self-representation implicit in the Sixth Amendment.

A. The Court Correctly Declined to Imply from Earlier Precedent that Due Process Requires a Higher Competency Standard to Waive Constitutional Rights than the Competency Standard to Stand Trial

The Court correctly rejected the Ninth Circuit's *Sieling* logic,[208] which concluded that *Westbrook* requires an additional inquiry, using a higher competency standard than *Dusky v. United States*,[209] to evaluate a defendant's mental capacity to discharge counsel or enter a guilty plea. The Ninth Circuit, like the dissent[210] and various commentators,[211] made much of the fact that the *Westbrook* Court remanded the case for further inquiry into the accused's waiver of the right to counsel, even though the accused had already received a hearing regarding his competence to stand trial. The Ninth Circuit saw this as evidence that a determination of competency to stand

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203 384 U.S. 150 (1966) (per curiam).

204 One court has described the *Westbrook* opinion as "cryptic." People v. Matheson, 245 N.W.2d 551, 554 (Mich. Ct. App. 1976).

205 478 F.2d 211 (9th Cir. 1973). Because this case gives the same holding as Moran v. Godinez, 972 F.2d 263 (9th Cir. 1992), which has been reversed by Godinez v. Moran, 113 S. Ct. 2680 (1993), it too has been overruled by implication.

206 348 U.S. 105 (1954).

207 384 U.S. 312 (1966) (per curiam).

208 *See supra* notes 96-104 and accompanying text.

209 362 U.S. 402 (1960) (per curiam).

210 *See supra* note 194 and accompanying text.

211 *See* Note, *Competence to Plead Guilty and to Stand Trial: A New Standard When a Criminal Defendant Waives Counsel*, 68 Va. L. Rev. 1139, 1152-54 (1982); Silten & Tullis, *supra* note 19, at 1065-68.

trial is inadequate to imply competency to waive constitutional rights.

Noting its serious protecting duty to ensure that a waiver is "intelligent and competent,"[212] the *Westbrook* Court remanded to ensure that this protecting duty was fulfilled. One might interpret this remand, as did the Ninth Circuit, as equating competence to waive with "intelligen[ce] and know[ledge]"; that is, in order for a waiver of counsel to be intelligent and knowing, there must be a further inquiry into mental competence beyond the original inquiry into competence to stand trial. The key to interpreting *Westbrook*, however, is to identify the particular issue that the Court remanded for "further inquiry": "was the defendant competent to waive counsel?" or "did the presumably competent defendant make a valid waiver in light of the three-prong inquiry of the *Johnson v. Zerbst*[213] progeny?" That the *Westbrook* Court remanded the case for the latter—for inquiry into whether the waiver was valid, rather than for inquiry into the accused's competence to waive counsel—was effectively illustrated by the *Godinez* Court. *Godinez* makes clear that although *Westbrook* distinguished "competence to stand trial" from "competence to waive [the] constitutional right to assistance of counsel," *Westbrook* intended to use "competence to waive" as a shorthand for the "intelligent and knowing" requirement of *Johnson*.[214] *Godinez* was certain of its *Westbrook* interpretation since that opinion quoted the *Johnson* language "immediately after noting that the trial court had not determined whether the [defendant] was competent to waive his right to counsel."[215] Thus, as *Godinez* reveals, *Westbrook* involved only the question of the validity of a waiver and not the issue of a defendant's competency to waive the right to an attorney.

The *Godinez* opinion is also consistent with *Massey* and *Rees*. The dissent and at least two academic commentators[216] misinterpret the statement in *Massey* that a defendant "might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without benefit of counsel."[217] Justice Blackmun, in dissent, cited this phrase for the notion that competency for one purpose does not necessarily imply competency for another.[218] Such

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212 Westbrook v. Arizona, 384 U.S. 150 (1966) (per curiam) (citing Johnson v. Zerbst, 304 U.S. 458, 465 (1938)).

213 304 U.S. 458 (1938). *See supra* notes 59-62 and accompanying text.

214 Godinez v. Moran, 113 S. Ct. 2680, 2688 (1993).

215 *Id.* (citing *Westbrook*, 384 U.S. at 150).

216 *See* Silten & Tullis, *supra* note 19, at 1067.

217 Massey v. Moore, 348 U.S. 105, 108 (1954).

218 *Godinez*, 113 S. Ct. at 2694 (Blackmun, J., dissenting).

an interpretation, however, takes *Massey* out of context. As noted, in making this statement the *Massey* Court was not concluding that the competency standards to waive constitutional rights and to stand trial are necessarily different as a matter of law; it was merely suggesting that a difference may exist.[219] Thus, the *Massey* Court did not enunciate a legal standard. Rather, it acknowledged that the question of whether the standards are the same was as yet unsettled. The *Godinez* holding resolves this previously undecided issue.

The dissent also incorrectly interprets *Rees* as requiring a heightened standard of competency.[220] Although the *Rees* Court spoke of a defendant's capacity to make a "rational choice,"[221] which the dissent equated to the Ninth Circuit's "reasoned choice" standard, the *Rees* Court gave absolutely no indication that it intended to formulate and utilize a competency standard in this situation that was higher than the *Dusky* "rational and factual understanding" standard.[222] One would think that if the *Rees* Court really intended to formulate a higher standard of mental competency in this situation, the Court would have explicitly explained that it was doing so. In this regard, one would have expected the *Rees* Court, as did the Ninth Circuit in *Sieling*, to state that "reasoned choice" requires a greater mental capacity than the *Dusky* "rational and factual understanding" standard. *Godinez* aptly describes the similarity between these terms by stating that "how this ['reasoned choice'] standard is different from (much less higher than) the *Dusky* standard . . . is not readily apparent to us."[223]

It follows that when the *Rees* Court spoke of determining mental competence "in the present posture of things,"[224] the Court meant "in light of any current factual developments concerning the defendant's mental health," not "in light of a higher competency standard now that the defendant is trying to forego further appeals as opposed to merely standing trial." The *Rees* Court simply could not determine whether to allow the defendant to withdraw his petition for certiorari because the district court had not yet had the occasion to make a judicial determination as to his mental condition "in the present posture of things." Thus, the Court was merely remanding the case for a determination of whether the defendant was competent to withdraw his petition for certiorari, in light of all current fac-

219 *See supra* notes 71-79 and accompanying text.
220 *See Godinez*, 113 S. Ct. at 2694-95 (Blackmun, J., dissenting).
221 Rees v. Peyton, 384 U.S. 312, 314 (1966) (per curiam).
222 The majority acknowledged this point. *See Godinez*, 113 S. Ct. at 2686 n.9.
223 *Id.* at 2686.
224 Rees v. Peyton, 384 U.S. 312, 314 (1966).

tual developments regarding his mental health, without giving any direction to the lower court to employ a heightened standard.

B. THE COURT'S OPINION COMPORTS WITH THE POLICY CONSIDERATIONS UNDERLYING THE PLEA BARGAINING PROCESS

A defendant who pleads guilty waives the Fifth Amendment prohibition against compulsory self-incrimination. In fact, a defendant who pleads guilty does more than present evidence against himself—he consents to the entry of a guilty plea. The trial court or jury does not need to examine or weigh any evidence; it only has to enter judgment and declare sentence.[225] Nonetheless, the Court correctly held that due process does not require a standard of mental competency to plead guilty that is higher than that standard of competency required of a defendant before he may be prosecuted. Although the entry of a guilty plea is a bold step, the *Godinez* Court explained that a defendant who elects to plead not guilty often is presented with similar choices involving the relinquishment of other constitutional rights.[226] These rights, delineated in *Boykin v. Alabama*,[227] include the privilege against compulsory incrimination, the right to trial by jury and the right to confront one's accusers.[228] The Court concluded, however, that while the decision to plead guilty is undeniably profound, it is no more complex "than the sum total of decisions a defendant may be called upon to make during the course of a trial."[229]

The Court's logic, solid in and of itself, is in accord with the policy considerations behind the theory of plea bargaining. Multiple competency standards could conflict with a defendant's right to plea bargain. A competency standard for pleading guilty that is higher than the *Dusky* standard for standing trial would create a class of semi-competent defendants who are able to stand trial but not to plead guilty.[230] This class would essentially be deprived of the speed, efficiency and privacy of the plea bargaining process afforded to other defendants.[231]

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225 Brady v. United States, 397 U.S. 742, 748 (1970).

226 *Godinez*, 113 S. Ct. at 2686.

227 395 U.S. 238, 243 (1969).

228 *Godinez*, 113 S. Ct. at 2686.

229 *Id.*

230 *See* Allard v. Helgemoe, 572 F.2d 1, 4 (1st Cir.), *cert. denied*, 439 U.S. 858 (1978); United States *ex rel.* Heral v. Franzen, 667 F.2d 633, 638 (7th Cir. 1981); People v. Heral, 342 N.E.2d 34, 37 (Ill. 1976).

231 *See supra* notes 51-58 and accompanying text for a discussion of the benefits plea bargaining.

C. THE COURT'S OPINION IS CONSISTENT WITH A DEFENDANT'S SIXTH AMENDMENT RIGHT TO SELF-REPRESENTATION

The Court correctly held that due process does not require a standard of mental competency to discharge one's counsel that is higher than the standard of competency required of a defendant before he may be put to trial. The Court arrived at this conclusion by noting that the mental competency needed to choose to waive counsel is no greater than that needed to waive other constitutional rights.[232] The Court referred to a waiver of the right prohibiting compulsory self-incrimination, along with those "*Boykin* rights" that a defendant waives when he enters a guilty plea.[233] Since the Court had earlier held that the competency required to plead guilty is no higher than the competency to stand trial, it naturally followed, in the Court's opinion, that the competency required to waive counsel need not be any higher either. Although this logic is solid, the Court could have also approached the issue in terms of the right to self-representation articulated in *Faretta v. California*,[234] with which the Court's decision is in accord.

In *Faretta*, the Supreme Court inferred the right to self-representation from the structure of the Sixth Amendment. There, the Court emphasized that the Sixth Amendment speaks of the assistance of counsel and that an attorney is merely the defendant's ancillary assistant in preparing a defense to the charges.[235] In this respect, *Faretta* heavily emphasized the recognition of a defendant's personal autonomy in regards to legal proceedings.

Consistent with this perspective, several lower courts have reasoned that the decision to represent oneself is not a waiver of the Sixth Amendment right to assistance of counsel, but an active assertion of the constitutional right to self-representation over the constitutional right to assistance of counsel.[236] The decisions a defendant must make regarding his Sixth Amendment rights—and, accordingly, the level of competence required to engage in that process—are identical whether the defendant elects to proceed through trial with counsel, or whether he elects to proceed *pro se*. One would naturally view the decision to proceed with counsel as the assertion

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232 *Godinez*, 113 S. Ct. at 2686.

233 *See supra* note 157 and accompanying text.

234 422 U.S. 806 (1975).

235 *Id.* at 820. *See supra* notes 40-44 and accompanying text.

236 *See* United States v. McDowell, 814 F.2d 245, 250 (6th Cir.), *cert. denied*, 484 U.S. 980 (1987); United States *ex rel.* Konigsberg v. Vincent, 526 F.2d 131, 133-34 (2d Cir. 1975), *cert. denied*, 426 U.S. 937 (1976); People v. Reason, 334 N.E.2d 572, 574 (N.Y. 1975).

of one's right to an attorney, rather than a waiver of one's "*Faretta* right" to self-representation. Likewise, one could perceive the decision to appear *pro se* at court as the assertion of one's Sixth Amendment "*Faretta* right" to self-representation, rather than a waiver of one's Sixth Amendment right to counsel. These rights to counsel and self-representation, though of the same constitutional caliber,[237] are necessarily mutually exclusive. One logically cannot exercise the right to counsel and the right to self-representation simultaneously.[238] Thus, the exercise of one need not be viewed as a waiver of the other, but instead as a conscious decision to invoke one constitutional right rather than another. In this respect, it would make little sense to hold that the assertion of one's "*Faretta* right" to self-representation requires a higher mental functioning than the assertion of one's right to representation of counsel, since the rights are of an identical constitutional caliber and require identical decision processes.

People v. Reason[239] best illustrates this logic. There, the trial court determined that the defendant was competent to stand trial.[240] When the trial commenced two years later, the defendant insisted upon self-representation. Throughout his trial the defendant persistently ignored the court's suggestions that he conduct his defense with the assistance of the two assigned attorneys and also rejected the court's recommendation of the insanity defense, choosing instead to present an alibi defense.[241] The trial court allowed him to continue his own defense, but instructed the appointed attorneys to remain at his side throughout the trial.[242] At trial, especially during the opening and closing statements, the defendant "drifted into irrelevant and nearly incoherent discourses."[243] Not surprisingly, upon conclusion, "the jury found the defendant guilty as charged."[244]

On appeal, the defendant's attorney claimed that the defendant was denied his constitutional right to counsel since he lacked sufficient capacity or competence to act as his own attorney, arguing that

[237] Though the right to counsel is expressly incorporated in the Sixth Amendment, the Supreme Court in *Faretta* has interpreted the Sixth Amendment to incorporate a constitutional right to self-representation. Faretta v. California, 422 U.S. 806, 819 (1975).

[238] In fact, one court identified that the decision to waive counsel is "implicit in the assertion of the right to defend Pro se." *Reason*, 334 N.E.2d at 574.

[239] 334 N.E.2d 572 (N.Y. 1975).

[240] *Id.* at 573.

[241] *Id.*

[242] *Id.*

[243] *Id.*

[244] *Id.*

the lower court "failed to perceive the distinction between mental capacity to stand trial and competency to act as attorney Pro se."[245] In rejecting this contention, the Court of Appeals of New York noted that it would be "difficult to formulate a workable, and presumably higher, standard of competency which would not infringe on the defendant's constitutional right to appear and defend in person."[246] Essentially, a higher competency standard would bar that semi-competent class of defendants from asserting their constitutional "*Faretta* rights" at trial. By so noting, the *Reason* court recognized that the right to assistance of counsel and the right to self-representation are of identical constitutional calibers and that there is no reason to require a heightened competency standard to assert one over the other. In conclusion, the court in *Reason* stated that after a defendant has been judged competent to stand trial, the only remaining "competency" determination is whether the discharge of counsel was made intelligently and voluntarily.[247]

D. THE IMPLICATIONS OF THE COURT'S HOLDING FOR FUTURE DEFENDANTS' COLLATERAL CHALLENGES TO THEIR COMPETENCY TO HAVE WAIVED CONSTITUTIONAL RIGHTS

The holding that due process does not require a higher competency standard to waive constitutional rights than to stand trial does not signify that a defendant's altered mental condition is irrelevant to the determination of whether she is competent to represent herself, to plead guilty, or to make any procedural decisions involving a waiver of constitutional rights. Quite the opposite is true. A defendant may still assert two other arguments concerning her mental condition in collaterally challenging her competency to waive such rights. First, under *Godinez,* she may challenge her competency, in light of her changed mental condition between the time of her original competency hearing and the time of her decision to waive counsel, under the *Dusky* "rational understanding" minimum standard.[248] If the state has adopted a higher standard by statute,[249]

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245 *Id.* (internal quotation marks omitted).

246 *Id.* at 574. Note that *Reason* is a New York state case and that the Constitution of the State of New York specifically provides for the right to self-representation. N.Y. CONST. art. I, § 6. By contrast, this right is merely implied in the structure of the Sixth Amendment of the United States Constitution. *See* Faretta v. California, 422 U.S. 806, 819 (1975).

247 *Reason*, 334 N.E.2d at 573-74.

248 Moran in fact attempted this, unsuccessfully, during the postconviction hearing. *See supra* notes 137-41 and accompanying text. However, the court may have erred by rejecting Moran's claim that he was mentally incompetent to represent himself. In determining that Moran was competent to stand trial, the court had originally relied on the

then the defendant may challenge her allegedly altered mental competency under whatever elaborate formulation the legislature has devised. Second, if the defendant is found competent to waive these rights, she may still challenge her waiver under the additional requirement that such waivers be exercised voluntarily and intelligently. *Reason* demonstrated this point when the court noted that "the determination that . . . [the waiver] was intelligent and voluntary, and thus legally effective, may well turn, even in major part, on the mental capability of the defendant at the time in the circumstances."[250] The validity of Moran's waiver, in light of the possibility that his medications caused his lethargy and depression, was not at issue in *Godinez* and may be the subject of future appeals.[251] The *Godinez* Court indeed hinted at this option when it acknowledged that in addition to determining whether a defendant was competent to discharge counsel, the court must satisfy itself that the discharge was knowing and voluntary.[252]

The dissent incorrectly notes that the majority's transformation of the *Westbrook* case into a case about the voluntariness of Moran's waiver "needlessly complicates this area of the law."[253] In fact, the majority's rejection of the Ninth Circuit's "reasoned choice" standard eliminates the guesswork in distinguishing between subtle nuances of the various standards, thus simplifying the inquiry. In addition, voluntariness will always be an issue in any waiver case under *Johnson* and *Brady*.[254] In any event, the majority noted, the states remain free to adopt heightened standards by statute if they believe that *Dusky* is inadequate to measure competency to waive rights. The Court in *Godinez* held only that due process does not require them to do so.

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testimony of two psychiatrists. Moran then sought to discharge his counsel two and one-half months after the hearing about his competence to stand trial. The court, concluding that Moran was competent to discharge his counsel based on the *Dusky* standard, relied on these same psychiatric evaluations. Although the court applied the correct standard, it should have ordered an updated psychiatric evaluation of Moran since his mental condition may have changed since the earlier examination. This possible error, however, was not at issue in *Godinez*.

249 The *Godinez* Court explained that the states are free to adopt higher competency requirements, but due process does not compel them to do so. Godinez v. Moran, 113 S. Ct. 2680, 2688 (1993).

250 *Reason*, 334 N.E.2d at 574.

251 The trial court explicitly determined that Moran had "knowingly and intelligently" waived his right to counsel and had "freely and voluntarily" entered his guilty plea, but these findings were not disputed in *Godinez*. *Godinez*, 113 S. Ct. at 2683.

252 *Id.* at 2687.

253 *Id.* at 2695 n.4 (Blackmun, J., dissenting).

254 *See supra* notes 59-62 and accompanying text.

VI. CONCLUSION

The Court in *Godinez v. Moran*[255] addressed an important issue that has divided the federal circuit courts for years. The *Godinez* Court correctly held that due process does not require a heightened competency standard to waive constitutional rights above the *Dusky* competency standard to stand trial. This holding is in accord both with the policy justifications supporting the plea bargaining process and with the constitutional right to self-representation.

Under *Godinez*, even if the trial court has already found the defendant competent to stand trial, the defendant's mental condition remains relevant to a judicial determination of competency to waive constitutional rights. A defendant who wishes to collaterally challenge his competency may still do so under the *Dusky* "rational understanding" standard, unless the state has adopted a higher standard by statute, in which case the defendant may assert his challenge in light of whatever standard the state legislature has adopted. Additionally, if a defendant is found competent to waive his rights, he may challenge his waiver under the additional requirement that the waiver be voluntary, intelligent and knowing.

BRIAN R. BOCH

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255 113 S. Ct. 2680 (1993).