

[J-54-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 308 Capital Appeal Docket
	:	
Appellee	:	Appeal by permission from the
	:	Interlocutory Order of February 7, 2000, at
	:	No. 84183501, Criminal, in the Court of
v.	:	Common Pleas of Berks County, holding
	:	that the court may decide the petition for
	:	post conviction relief.
	:	
RANDY TODD HAAG	:	
APPEAL OF: NAOMI HAAG, AS NEXT	:	
FRIEND,	:	
	:	SUBMITTED: January 23, 2001
Appellant	:	
	:	
	:	
	:	

OPINION

MADAME JUSTICE NEWMAN

DECIDED: October 24, 2002

Naomi Haag (Appellant), as next friend of Randy Todd Haag (Haag), appeals from an Order of the Court of Common Pleas of Berks County (PCRA court) denying her motion to stay all Post Conviction Relief Act¹ (PCRA) proceedings and requiring her to proceed on the PCRA petition that she had filed on behalf of Haag. Based upon the reasons set forth below, we affirm.

¹ 42 Pa.C.S. § 9541 et seq.

I. FACTS AND PROCEDURAL HISTORY

This case involves a somewhat complicated procedural history. On February 7, 1986, a jury found Haag guilty of the first-degree murder and kidnapping of Richard Good. Following a penalty phase hearing, the jury sentenced Haag to death and the trial court imposed a consecutive sentence of ten to twenty years imprisonment for the kidnapping charge. Haag filed a direct appeal with this Court. During the pendency of his direct appeal, Haag's attorney at trial and on appeal, Robert L. Van Hoove, Esq. (Van Hoove), died. Subsequent to his death, Van Hoove's files regarding Haag's case were destroyed. Then, this Court affirmed Haag's conviction for murder in the first-degree and the sentence of death. Commonwealth v. Haag, 562 A.2d 289 (Pa. 1989).

While Haag remained incarcerated at the State Correctional Institution at Huntingdon (SCI Huntingdon), the Pennsylvania Department of Corrections (DOC) sought involuntary mental health treatment for Haag pursuant to the Mental Health Procedures Act (Mental Health Act).² In March of 1991, William J. Love, Acting Superintendent of SCI Huntingdon, filed a petition in the Huntingdon County Court of Common Pleas requesting permission to involuntarily commit Haag in order to treat him for his mental illness. An attorney from the Huntingdon County Public Defender's Office represented Haag at the involuntary treatment hearing. By Order dated April 5, 1991, former President Judge Newton C. Taylor denied the Petition for Involuntary Treatment. The judge found evidence that Haag was mentally ill; however, he denied the petition because the DOC had failed to demonstrate that Haag

² Act of July 9, 1976, P.L. 817, No. 143, as amended, 50 P.S. § 7101 et seq.

was a danger to himself or others, as required for involuntary treatment orders under the Mental Health Act.³

The DOC continued to monitor Haag's mental state. Haag's mental health records from 1991 through 1994 reflect that Dr. Frederick E. Wawrose, Consulting Psychiatrist at SCI Huntingdon, repeatedly diagnosed Haag as psychotic, paranoid schizophrenic, delusional, and suffering from Capgras' Syndrome.⁴

Then, on November 28, 1995, Norris Gelman, Esq. (PCRA counsel)⁵ filed a PCRA petition on behalf of Haag alleging that Haag was incompetent to pursue collateral relief and seeking the appointment of Haag's mother, Naomi Haag (Appellant), as next friend.⁶ The Commonwealth contested the appointment of Appellant as next friend and filed a response to Haag's PCRA petition.

³ See 50 P.S. §§ 7401, 7301 (stating that a prisoner may be subject to involuntary treatment if he or she poses a clear and present danger of harm to others, himself, or herself).

⁴ People afflicted with Capgras' Syndrome believe that important people in their lives have been replaced by exact doubles and may even believe that they themselves are represented somewhere by a double they never see. See R. J. Berson, Capgras' Syndrome, 140 AM. J. PSYCHIATRY 969 (1983).

⁵ Robert Brett Dunham, Esq. acted as co-counsel in this matter beginning in December of 1998.

⁶ Haag's PCRA petition also asserted several grounds attacking his first-degree murder conviction and death sentence, including that trial counsel acted ineffectively by failing to: (1) object to the charge regarding accomplice testimony, (2) object to the charge regarding alibi testimony, (3) raise and seek reversal of the death penalty based upon a violation of Witherspoon v. Illinois, 391 U.S. 510 (1968), (4) request a no adverse inference charge addressing a defendant's right not to testify during the penalty phase, and (5) object to several instances of prosecutorial misconduct. We note that these claims may be adequately litigated without the participation of Haag.

On April 26, 1996, then-Governor Tom Ridge issued a death warrant for the execution of Haag. Thereafter, the Governor signed a reprieve staying the death warrant pending the resolution of Haag's PCRA proceedings.

On March 12, 1997, the PCRA court issued an Order that scheduled a hearing on whether or not Haag had made a conscious and rational decision not to contest the death penalty. Additionally, the court ordered Dr. Robert L. Sadoff (Dr. Sadoff) to act as its impartial psychiatric witness on this issue and permitted the parties to present their own expert opinions as to Haag's competence.

At the hearing on April 28, 1997, defense psychologist Dr. Richard G. Dudley, Jr. (Dr. Dudley) testified as to Haag's competency. Dr. Dudley reported that Haag was unable to assist his present counsel in post conviction litigation because he did not possess a rational understanding of his present situation and in his present state, he was not able to discuss facts relevant to the case or to answer even the most basic inquiries from counsel. On May 7, 1997, Dr. Sadoff testified that he was in agreement with Dr. Dudley's assessment of Haag's mental state. Dr. Sadoff opined that, because of Haag's psychosis, he was not competent to knowingly and intelligently waive his right to a collateral attack of his sentence and conviction.

On May 19, 1997, the PCRA court issued an Order stating that while Haag was incompetent to stand trial or to be executed, Appellant could not file a PCRA petition as next friend. The court stated that Appellant could pursue PCRA relief on behalf of Haag only as a court-appointed guardian. As part of its May 19, 1997 Order, the court dismissed the next friend petition. Upon request of the parties, on June 11, 1997, the PCRA court vacated its Order of May 19, 1997, and stayed all proceedings pending this Court's

decision in In re Heidnik, 720 A.2d 1016 (Pa. 1998). We issued our decision in Heidnik and the PCRA court granted Appellant next friend status on October 29, 1998.

On November 10, 1998, Attorney General Mike Fisher filed a Motion for a Treatment Order, asking the PCRA court to order the DOC to provide treatment to Haag for paranoid schizophrenia. Following a hearing on January 4, 1999, the PCRA court dismissed the motion because the court found that the Attorney General had presented no evidence that Haag was a danger to himself or others as is required for involuntary treatment of all individuals under the Mental Health Act.⁷

On January 29, 1999, the PCRA court ordered Appellant to proceed with her reinstated petition for post conviction relief on behalf of Haag. Appellant moved the PCRA court to declare next friend remedies inadequate to protect Haag's right to challenge his conviction and death sentence and to stay all PCRA proceedings until Haag regained his competence. The court allowed defense psychiatrist Dr. Dudley to re-examine Haag to determine Haag's current mental state.

The PCRA court held a hearing on Appellant's motion on April 9, 1999. At the hearing, Dr. Dudley again offered the opinion that Haag was incompetent and that his condition remained unchanged from his last evaluation.

⁷ See 50 P.S. § 7401 (stating that proceedings may be instituted for the treatment of a person serving a criminal sentence that has become mentally disabled by using the civil provisions of the Mental Health Act and in the same manner as if the person were not serving a criminal sentence).

On February 4, 2000, the PCRA court issued an Order denying Appellant's motion to stay PCRA proceedings. The court declined to declare Haag incompetent to proceed with collateral review of his death sentence because the court found such a determination unnecessary when a next friend had been appointed and had commenced PCRA proceedings on behalf of the prisoner. Finally, the PCRA court ordered Appellant to proceed with her PCRA next friend petition.

In its Opinion in support of its Order, the PCRA court held that a court may decide a PCRA petition on its merits, despite the fact that a prisoner is not competent to assist his next friend or counsel during the proceedings. The court noted that no Pennsylvania or United States Supreme Court decision establishes a standard of competence for a PCRA proceeding. The court reasoned that the whole purpose of appointing a next friend is to secure a prisoner's PCRA rights, even when the prisoner cannot secure them for himself or herself. The court concluded that a prisoner could always proceed by next friend regardless of how incompetent he or she may be.

On February 8, 2000, the PCRA court certified that its Order in the present case involved a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal from its Order may materially advance the ultimate determination of the matter. Thereafter, Appellant sought permission to appeal to this Court and we granted review.

II. DISCUSSION

A. Competency Requirement

We have addressed the competency required of an individual to proceed through various stages of the criminal justice system. According to our Mental Health Act, an

individual must be competent to be tried, convicted, or sentenced. 50 P.S. § 7402(a). The Mental Health Act provides that a defendant is incompetent when “found to be substantially unable to understand the nature or object of the proceedings against him or to participate and assist in his defense.” Id. In Commonwealth v. Jermyn, 652 A.2d 821, 823 (Pa. 1995), cert. denied, 515 U.S. 1126 (1995), we recognized that the above-stated competency standard does not apply beyond sentencing. Regarding direct appeal, a defendant must possess some level of competence because he or she may waive his or her right to appeal only through knowing, voluntary, and intelligent waiver. PA. CONST. art. 5, § 9; Commonwealth v. Passaro, 476 A.2d 346, 348 (Pa. 1984). We have stated that it is not proper for an appellate court to review a defendant’s direct appeal if he or she is not competent enough to communicate with counsel. Commonwealth v. Silo, 364 A.2d 893, 894-95 (Pa. 1976). In addition, looking to the decision of the United States Supreme Court in Ford v. Wainwright, 477 U.S. 399 (1986), we have recognized that the Eighth Amendment prohibits the execution of an incompetent individual. Jermyn, 652 A.2d at 822. The Commonwealth may not execute someone who does not “comprehend[] the reasons for the death penalty and its implications.” Id. at 824.

Whether an individual must possess some level of competency in order to pursue a collateral challenge of his or her conviction and death sentence is a matter of first impression in Pennsylvania.⁸ Neither the PCRA nor its accompanying rules of procedure discuss the competency of a prisoner to pursue relief under the Act. Beyond holding that a prisoner must be competent to waive the right to seek PCRA relief, Commonwealth v.

⁸ Because the instant appeal hinges upon a question of law, our standard of review is plenary. Phillips v. A-Best Products Co., 665 A.2d 1167, 1170 (Pa. 1995).

Bronshtein, 729 A.2d 1102 (Pa. 1999), neither we nor the United States Supreme Court have addressed the level of competency required to pursue post conviction relief.

Appellant asserts that, in order to proceed through PCRA proceedings, a prisoner must be competent. Additionally, Appellant suggests that this Court adopt, as the competency standard for collateral review, either the standard of competence to be executed or to stand trial.⁹ Finally, Appellant asserts that the lower court erred when it refused to suspend PCRA proceedings until Haag regains his competence. She claims that a prisoner's lack of competency and its effect on communication with counsel may, under certain circumstances, justify a suspension of PCRA proceedings even after the appointment of a next friend.

Today, we hold that when represented by a next friend and counsel, a prisoner's incompetence is not a bar to effective collateral review in a death penalty case. We arrive at our decision based upon our line of precedent dealing with next friend standing.

A next friend is a person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff, but who is not a party to the lawsuit and not appointed as a guardian. BLACK'S LAW DICTIONARY 1065 (7th ed. 1999); see generally Bertinelli v. Galoni, 200 A. 58 (Pa. 1938). The United States Supreme Court first discussed next friend standing at length in Whitmore v. Arkansas, 495 U.S. 149 (1990). Whitmore involved a putative next friend seeking to intervene and appeal the conviction and sentence of a fellow

⁹ As noted earlier in this discussion, the standard for the competency to be executed is to be able to comprehend the reasons for the death penalty and its implications. Jermyn, 652 A.2d at 824. The competency standard to stand trial is to be able to understand the nature or object of the proceedings and to assist in one's defense. 50 P.S. § 7402(a).

death row inmate in an Arkansas court. The United States Supreme Court reviewed the decision of the Arkansas Supreme Court to deny next friend standing as a matter of state common law. During its analysis, the United States Supreme Court discussed the requirements for next friend standing for purposes of the federal habeas corpus statute and noted two prerequisites:

First, a “next friend” must provide an adequate explanation--such as inaccessibility, mental incompetence, or other disability--why the real party in interest cannot appear on his own behalf to prosecute the action. Second, the “next friend” must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate, and it has been further suggested that a “next friend” must have some significant relationship with the real party in interest.

Id. at 163-64 (citations omitted). Through a series of cases, which relied upon the reasoning of Whitmore, we recognized that our law permits a next friend to bring a PCRA action on behalf of a prisoner. See Commonwealth v. White, 734 A.2d 374 (Pa. 1999); Bronshtein, 729 A.2d at 1102; Heidnik, 720 A.2d at 1016.

In Heidnik, this Court focused upon how a third party may raise the issue of a prisoner’s competency to be executed.¹⁰ While the third party in Heidnik, an attorney for

¹⁰ The Commonwealth scheduled the execution of Gary Heidnik (Heidnik) for April 15, 1997. The third party in Heidnik, an attorney for the Center for Legal Advocacy and Defense Assistance (CLEADA), sought a stay of execution without petitioning for next friend standing before the common pleas court on April 11, 1997. That same day, the CLEADA attorney sought a stay of execution with this Court. The Court of Common Pleas denied the stay. In separate proceedings, CLEADA sought an Order from the U.S. District Court for the Eastern District of Pennsylvania staying the execution of Heidnik and designating Heidnik’s daughter as next friend. On April 16, 1997, this Court granted a temporary stay of execution. Meanwhile, the federal district court denied relief to Heidnik, but continued a stay of execution pending an appeal to the Third Circuit Court of Appeals. The Third Circuit reversed the decision of the district court, held that Heidnik was (continued...)

the Center for Legal Advocacy and Defense Assistance, had not sought next friend standing before the common pleas court, we looked to the requirements of next friend standing as set forth in Whitmore as the procedural framework for how a third party could bring the matter of competency to be executed before a court. Id. at 1019-21. We also suggested that the standards of Whitmore would apply if a third party sought to initiate PCRA litigation as a next friend on behalf of a prisoner. Id. at 1020.

Less than a year later, we again addressed next friend standing; this time within the context of a third party's ability to appeal an Order of a PCRA court dismissing the PCRA petition of a death row inmate. Bronshtein, 729 A.2d at 1102. Antuan Bronshtein (Bronshtein) informed the PCRA court that he wished to waive his right to seek PCRA relief. Following several hearings, the PCRA court entered an Order dismissing his PCRA petition. Bronshtein's mother and sister, as next friends, filed an appeal of the Order. After reviewing the standards for next friend standing in Whitmore, we held that Bronshtein's mother and sister lacked standing as next friends. Id. at 1106-07. We held that because Bronshtein was competent and had knowingly, intelligently, and voluntarily waived his right to pursue PCRA relief, his family members failed to meet the first requirement of next friend standing by showing that Bronshtein could not appear on his own behalf and pursue PCRA relief. Id.

(...continued)

incompetent to litigate his own cause, and appointed next friend status to Heidnik's daughter (next friend). The Commonwealth appealed to the United States Supreme Court, which issued an Order vacating the stay of execution on April 19, 1997. The next friend filed with this Court a Petition for Review of the Order of the Court of Common Pleas, which denied a stay of execution. After reviewing this Petition, we issued an Opinion clarifying the requirements for next friend standing in our courts.

Then, in White, we reviewed the challenge of Maxine Davidson White (White) to an Order of the PCRA court denying her standing as a next friend to file a PCRA petition on behalf of her father, Gary Heidnik. Relying upon Bronshtein and Heidnik, we noted that Pennsylvania had adopted the two prerequisites for next friend standing as set forth in Whitmore. White, 734 A.2d at 376. This Court then affirmed the PCRA court's determination that White lacked standing as a next friend because she failed to demonstrate that her father was incompetent to appear on his own behalf and litigate his own cause. Id. at 385. In discussing the judicial inquiry into the degree of competency that satisfies the Whitmore standard, we stated that it "is not dependent upon the use of certain magic words to describe the prisoner's competency or lack thereof, but instead requires that the fact-finder make a conscientious effort to determine whether the prisoner is capable of making a rational decision to forego the potential avenues of appeal that are available to him." Id. at 382.

Based upon this line of cases, a putative next friend must demonstrate that the prisoner is incompetent, such that the prisoner is incapable of making a rational decision as to whether to pursue PCRA relief. Id.; Bronshtein, 729 A.2d at 1106-07. Also, a putative next friend must prove that he or she is truly dedicated to the prisoner's best interests and shares a significant relationship with the prisoner in order to obtain standing to pursue post conviction relief on behalf of the prisoner. White, 734 A.2d at 376; Bronshtein, 729 A.2d at 1106; Heidnik, 720 A.2d at 1020. It logically follows that a prisoner need not be competent to proceed through PCRA proceedings when a next friend has been appointed to act on his or her behalf because of such incompetence.

In the present case, it is indisputable that Haag is incompetent to waive his right to PCRA relief and that Appellant has standing as next friend to pursue such relief for him.

Appellant seeks to suspend PCRA proceedings because Haag cannot aid her and PCRA counsel in an investigation of possible avenues for relief. It appears that, in any situation where a next friend initiates PCRA proceedings, the prisoner will be unwilling or unable to assist in identifying issues to raise on collateral review. A prisoner's inability to participate in next friend PCRA proceedings due to incompetence is not a reason to halt such proceedings. Requiring a next friend to pursue relief while a prisoner is incompetent ensures that the prisoner promptly reaps the benefits from meritorious claims, rather than suffering delay in relief. See, e.g., State v. Debra A.E., 523 N.W.2d 727, 735 (Wis. 1994). Also, if a next friend seeks review while the prisoner is incompetent, issues will be resolved while evidence and memories are still fresh. We recognize that this case involves unusual factual circumstances such that it may be impossible to discover cognizable claims outside of the record, which otherwise would have been available under the PCRA, but were undiscoverable due to Haag's incompetence. Due to the severity of the penalty involved, we do not want such a potential class of claims to escape review; however, we do not believe that an indefinite suspension of PCRA proceedings is the best way to preserve such issues. We instruct Appellant to proceed on her petition, and if Haag regains competency, he may seek review of any such claims through a second PCRA petition.¹¹

¹¹ A possible scenario may occur in the future. Haag may regain his competence after his next friend and counsel have litigated claims through a PCRA petition. The next friend may be unsuccessful in obtaining relief; and, now that he is competent, Haag may wish to raise cognizable PCRA claims of which only he knew and, because of his incompetence, was unable to communicate to his next friend or counsel. While Appellant asserts that Haag will be time barred from bringing a second petition and raising this class of claims, we disagree. Judgment in this case became final in 1989. See 42 Pa.C.S. § 9545(b)(3). PCRA counsel filed Haag's first petition in November of 1995. Haag's first petition was timely filed. See Section 3(1) of the Act of Nov. 17, 1995 (Spec. Sess. No. 1), P.L. 1118, No. 32 (stating that a prisoner whose judgment has become final on or before the effective date of the amended PCRA (January 16, 1996) shall be deemed to have filed a timely petition if (continued...))

Our decision to decline to indefinitely suspend these proceedings based upon speculation that additional claims may exist, but are, as of now, undiscoverable, aligns with the General Assembly's interest in according finality to PCRA proceedings. Peterkin, 722 A.2d at 643-44; Commonwealth v. Albrecht, 720 A.2d 693, 700 (Pa. 1998). There is no provision in the PCRA for a perpetual stay or suspension of proceedings. Also, our decision is in accord with other jurisdictions that have considered the issue of competency

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prisoner's first petition is filed within one year of the effective date of the Act); Commonwealth v. Yarris, 731 A.2d 581, 587 n.5 (Pa. 1999).

If Haag files a second petition, that petition would be subject to the requirements for timely filing as found in the current provisions of the PCRA. See Commonwealth v. Peterkin, 722 A.2d 638, 641 (Pa. 1998). Because Haag's second petition cannot possibly be filed within one year of the date upon which judgment became final, his second petition will be time barred unless one of three statutory exceptions applies. 42 Pa.C.S. § 9545(b); Yarris, 731 A.2d at 586. The time limit for filing a PCRA petition is jurisdictional, and not subject to equitable tolling. Commonwealth v. Fahy, 737 A.2d 214, 222 (Pa. 1999).

Although we have not addressed the issue, arguably, the exception found in 42 Pa.C.S. § 9545(b)(1)(ii) seems to apply to the present facts. 42 Pa.C.S. § 9545(b)(1)(ii) (providing for an exception to the time requirement for filing a petition when "the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence"). Typically, section 9545(b)(1)(ii) has been used to excuse the untimeliness of a petition based upon after-discovered evidence. Commonwealth v. Gamboa-Taylor, 753 A.2d 780, 783 (Pa. 2000). In this case, however, Haag's inability to communicate with counsel because of mental illness, the death of prior counsel, and the destruction of Haag's file could satisfy the exception in section 9545(b)(1)(ii) for claims based upon facts not discovered by PCRA counsel through the exercise of due diligence. If Haag filed his second petition within 60 days of regaining his competence, and thereby, his ability to "know" such facts, Haag's second petition would not be time barred. See 42 Pa.C.S. § 9545(b)(2).

As this issue is not ripe, and may never be, we must leave it for another day. Under our understanding of the current PCRA, which the General Assembly may change before we ever have the opportunity to address this matter, Haag would have the opportunity to seek review of claims otherwise available under the PCRA, but unraisable in his first petition due to his incompetence.

to pursue post conviction review. See Debra A.E., 523 N.W.2d at 734; Dugar v. Whitley, 615 So.2d 1334, 1335 (La. 1993); Ex parte Mines, 26 S.W.3d 910, 911 (Tex. Crim. App. 2000), cert. denied, 532 U.S. 908 (2001); Fisher v. State, 845 P.2d 1272, 1277 (Okla. Crim. App. 1992), cert. denied, 509 U.S. 911 (1993). Other state courts have taken a position contrary to ours and have concluded that a prisoner must be competent to pursue post conviction relief. See Carter v. State, 706 So.2d 873, 875 (Fla. 1998) (per curiam); People v. Owens, 564 N.E.2d 1184, 1188 (Ill. 1990). While these courts facially advocate a stance different from our present holding, the ultimate outcomes in these cases are the same as the instant case. The courts holding that a prisoner must be competent to pursue post conviction relief also conclude that a third party must promptly seek all legal and record based claims on behalf of the incompetent prisoner, and the prisoner may raise any factually-based claims once he or she has regained competency. See Carter, 706 So.2d at 876 (holding “[i]f a post conviction defendant is found incompetent, claims raising purely legal issues that are of record and claims that do not otherwise require the defendant’s input must proceed”); Owens, 564 N.E.2d at 1190 (holding that issues that are of record and not dependent upon personal information from the prisoner could be litigated by competent counsel). We now address whether our holding today infringes upon the constitutional rights of Haag.

B. Constitutional Considerations

Appellant claims that the Order of the PCRA court, which directs her to proceed in her pursuit of PCRA relief, violates the constitutional ban on cruel and unusual punishment, Haag’s right to effective assistance of counsel, and Haag’s right to due process. As discussed infra, the Order of the PCRA court does not violate Haag’s constitutional rights and therefore we affirm.

1. Right to be free from cruel and unusual punishment

Relying upon the decision of the United States Supreme Court in Ford v. Wainwright, 477 U.S. 399 (1986), Appellant asserts that the Eighth Amendment¹² provides grounds to suspend adversarial proceedings in a capital post conviction case during the period in which the prisoner's mental illness prevents him or her from comprehending the reasons for his or her sentence or its implications. She claims that forcing an incompetent prisoner to proceed through PCRA proceedings and toward his or her death is tantamount to cruel and unusual punishment.

The ban on cruel and unusual punishment set forth by the Eighth Amendment prohibits a state from carrying out the sentence of death upon a prisoner who is insane. Ford, 477 U.S. at 409-10; Jermyn, 652 A.2d at 822. The limit on a state's power to execute the insane is rooted in the questionable retributive value of executing a person who has no comprehension of why he or she has been stripped of the right to life and the natural abhorrence society feels at killing one who has no capacity to understand his or her own conscience or deity. Ford, 477 U.S. at 409-10.

Ford addresses only the imposition of the death penalty and does not examine any limitation on a state's power to require a next friend to proceed with the post conviction proceedings that he or she has initiated. In the present case, the Commonwealth is not inflicting cruel and unusual punishment upon Haag. The Commonwealth has yet to punish Haag by carrying out his death sentence. We conclude that the Eighth Amendment ban on executing the insane does not prohibit an incompetent individual from using a system of

¹² The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII.

collateral review to challenge an allegedly fundamentally unfair conviction before the imposition of sentence. Consequently, Haag is not entitled to relief under the Eighth Amendment.

2. Right to effective assistance of PCRA counsel

Appellant argues that due to his mental illness, Haag cannot effectively communicate and work with PCRA counsel during the collateral review process. Consequently, Appellant claims that PCRA counsel cannot investigate claims outside of the record due to Haag's incompetence, the death of previous counsel, and destruction of Haag's file. Therefore, Appellant asserts that forcing PCRA counsel to proceed, despite his inability to investigate all possible claims for PCRA relief, denies Haag effective assistance of counsel.

While a PCRA petitioner does not have a Sixth Amendment right to assistance of counsel during collateral review, this Commonwealth, by way of procedural rule, provides for the appointment of counsel during a prisoner's first petition for post conviction relief. Pa.R.Crim.P. 904; Pennsylvania v. Finley, 481 U.S. 551, 555 (1987); Commonwealth v. Kenney, 732 A.2d 1161, 1165 (Pa. 1999). Pursuant to our procedural rules, not only does a PCRA petitioner have the "right" to counsel, but also he or she has the "right" to effective assistance of counsel. Commonwealth v. Albrecht, 720 A.2d at 699-700. The guidance and representation of an attorney during collateral review "should assure that meritorious legal issues are recognized and addressed, and that meritless claims are foregone." Commonwealth v. Albert, 561 A.2d 736, 738-39 (Pa. 1989).

Requiring counsel to pursue PCRA relief on Haag's behalf with the assistance of a next friend is sufficient to protect any "right" to counsel. There is no indication that PCRA

counsel will not raise all meritorious claims capable of investigation. The mere possibility that an undiscoverable basis for relief exists does not render counsel ineffective. Consequently, we hold that the order of the PCRA court does not violate Haag's right to effective assistance of counsel.

3. Right to due process of law

Lastly, Appellant claims that Haag has a due process right¹³ to suspend PCRA proceedings while extreme mental incompetence prevents him from meaningfully defending his life. Referring to Evitts v. Lucey, 469 U.S. 387 (1985), Appellant argues that Pennsylvania has created a due process interest in meaningful post conviction review and that such review is not possible while Haag remains incompetent.

States have no constitutional obligation to provide a means for collaterally attacking convictions; however, if they do, then such procedures must comport with the fundamental fairness mandated by the Due Process Clause. Finley, 481 U.S. at 557 (holding that due process does not require that PCRA counsel's actions comport with the procedures set

¹³ Appellant asserts that forcing her to proceed with the PCRA petition would violate Haag's due process rights under both the Fourteenth Amendment to the United States Constitution and Article 1, Section 9 of the Pennsylvania Constitution.

The Fourteenth Amendment provides in part, "nor shall any State deprive any person of life, liberty, or property, without due process of Law . . ." U.S. CONST. amend. XIV, § 1. Article 1, Section 9 states in part, "In all criminal prosecutions the accused . . . [cannot] be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land." PA. CONST. art. 1, § 9. This Court has interpreted Article 1, Section 9 as the functional equivalent of the Due Process Clause of the federal constitution. Commonwealth v. Kratsas, 764 A.2d 20, 27 n.5 (Pa. 2001); Commonwealth v. Snyder, 713 A.2d 596, 600 (Pa. 1998). Appellant does not argue that Article 1, Section 9 provides Haag with greater due process protection than its federal counterpart and, therefore, we treat the two provisions as coextensive in this Opinion.

forth in Anders v. California, 386 U.S. 738 (1967)); see also Evitts, 469 U.S. at 401 (stating with respect to direct appeal that, “when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution--and in particular, in accord with the Due Process Clause”). States have “substantial discretion to develop and implement programs to aid prisoners seeking to secure postconviction review.” Finley, 481 U.S. at 559. See also Murray v. Giarratano, 492 U.S. 1, 13 (1989) (plurality) (O’Connor, J., concurring). Additionally, post conviction programs need not extend “the full panoply of procedural protections that the Constitution requires be given to defendants who are in a fundamentally different position--at trial and on first appeal as of right.” Finley, 481 U.S. at 559. See also Murray, 492 U.S. at 13 (plurality) (O’Connor, J., concurring).

While the criminal trial of an incompetent defendant violates due process, Cooper v. Oklahoma, 517 U.S. 348, 354 (1996); Commonwealth v. Hughes, 555 A.2d 1264, 1270 (Pa. 1989), PCRA proceedings involving an incompetent prisoner do not because of the significant differences between trial and collateral review. During trial, the Commonwealth hales a defendant into court and seeks to overcome the presumption of innocence by proving beyond a reasonable doubt that the defendant committed a crime. See Ross v. Moffitt, 417 U.S. 600, 610 (1974); Commonwealth v. Simmons, 662 A.2d 621, 627 (Pa. 1995), cert. denied, 516 U.S. 1128 (1996). A defendant has the constitutional right to a fair trial, which includes the rights to the effective assistance of counsel, confrontation of witnesses, and election to testify or remain silent. U.S. CONST. amend. V, VI; Riggins v. Nevada, 504 U.S. 127, 139-140 (1992) (Kennedy, J., concurring). Because of the risk that a defendant may be convicted without being able to assist in his own defense, due process

mandates that the trial process stop if a defendant is found incompetent.¹⁴ Drope v. Missouri, 420 U.S. 162, 171-172 (1975); Commonwealth ex rel. Hilberry v. Maroney, 227 A.2d 159, 160 (Pa. 1967). A PCRA proceeding differs greatly from trial and direct review.

The PCRA system is not part of the criminal proceeding itself, but is, in fact, civil in nature. Finely, 481 U.S. at 557. The purpose of the PCRA is to provide an action for “persons convicted of crimes they did not commit and persons serving illegal sentences” to obtain relief. 42 Pa.C.S. § 9542. See also Peterkin, 722 A.2d at 642-43. The prisoner initiates the proceedings and bears the burden of proving, by a preponderance of the evidence, that his conviction or sentence resulted from one or more of the PCRA’s specifically enumerated errors and that the error has not been waived or previously litigated. 42 Pa.C.S. § 9543; Commonwealth v. Banks, 656 A.2d 467, 469 (Pa. 1995), cert. denied, 516 U.S. 835 (1995). Additionally, a prisoner does not have an absolute right to collateral review, and may chose to either forgo PCRA proceedings or waive claims for relief by failing to comport with the procedural requirements of the Act. 42 Pa.C.S. §§ 9543(a)(3), 9544; Commonwealth v. Basemore, 744 A.2d 717, 726 (Pa. 2000). Pennsylvania has granted by rule the right to effective assistance of counsel during the first PCRA petition; however, a prisoner is not always entitled to discovery or an evidentiary hearing, even in capital cases. 42 Pa.C.S. § 9545(d); Pa.R.Crim.P. 904, 902(E), 907-909.

We hold that permitting an incompetent prisoner, who is represented by a next friend and counsel, to pursue PCRA relief comports with the fundamental fairness of the Due

¹⁴ A defendant is incompetent to stand trial if he or she lacks “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . [and] a rational as well as factual understanding of the proceedings against him.” U.S. v. Dusky, 362 U.S. 402, 402 (1960) (per curiam). See also 50 P.S. § 7402(a).

Process Clause. Historically, there have been hundreds of reported cases where a next friend sued on behalf of individuals that had been deemed legally incompetent to sue in their own right. See Heidnik, 720 A.2d at 1020. A next friend in the PCRA context is no different. Unlike trial, collateral review may effectively proceed despite a prisoner's incompetence. The ability of a next friend to investigate and raise all cognizable claims on behalf of an incompetent prisoner so that the prisoner may promptly seek relief, and the ability of the petitioner to raise undiscoverable claims if he or she regains competence, sufficiently protects the limited due process rights of the prisoner. We hold that the Order of the PCRA court does not violate Haag's constitutional rights and, therefore, Appellant is not entitled to indefinitely suspend PCRA proceedings.

III. CONCLUSION

In light of the above discussion, we affirm the Order of the PCRA court denying Appellant's motion to stay all proceedings and requiring her to proceed on the PCRA petition that she had filed on behalf of Haag.¹⁵ We remand this matter to the Court of Common Pleas of Berks County for proceedings consistent with this Opinion.

Mr. Justice Castille files a concurring opinion.

Mr. Chief Justice Zappala files a dissenting opinion in which Mr. Justice Nigro joins.

¹⁵ Appellant also has the ability to seek a stay of Haag's execution due to his mental incompetence. The Eighth Amendment prohibits the execution of an insane individual. Wainwright, 477 U.S. at 399. The Commonwealth may not execute an individual who fails to "comprehend[] the reasons for the death penalty and its implications." Jermyn, 652 A.2d at 824.