

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5569
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUES ASPRELLA CARDENAS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 93-CR-34-1
- - - - -

(July 19, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Lues Asprella Cardenas appeals the district court's denial of his oral motion for a second psychiatric examination. Although he does not challenge the initial determination, made after extensive physical and psychological testing, that he was competent to stand trial, Cardenas argues that his demeanor at trial required that the district court order a second psychiatric examination. This Court reviews a district court's denial of a motion for a psychiatric examination for an abuse of discretion.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

See United States v. Williams, 998 F.2d 258, 266 (5th Cir. 1993), cert. denied, 114 S.Ct. 940 (1994).

A district court must hold a competency hearing following a showing of reasonable cause for believing that the defendant may be incompetent. United States v. Dockins, 986 F.2d 888, 893 (5th Cir.) (defendant moved for re-examination after prior examination and determination of competency), cert. denied, 114 S.Ct. 149 (1993). Under 18 U.S.C. § 4241, the test for competency is twofold. United States v. Sparks, 2 F.3d 574, 584 (5th Cir. 1993), cert. denied, 114 S.Ct. 1548 (1994). First, the defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." Id. (citation omitted). Second, the defendant must have "a rational as well as factual understanding of the proceedings against him." Id.

In denying the second motion for a competency hearing, the district court noted that the psychiatric report indicated that Cardenas would intentionally act mentally impaired and "that's exactly what he's doing now that he's come to trial." The district court's opinion that Cardenas was deliberately attempting to appear incompetent is entitled to considerable deference. See Dockins, 986 F.2d at 893. In the present case, the court's opinion is supported by the psychiatric report and by Cardenas's counsel's affirmation that he was able to communicate with Cardenas prior to trial. The district court's decision not to order a second competency hearing was not an abuse of discretion. The judgment of the district court is AFFIRMED.